

**NORTH CAROLINA  
REGISTER**

**IN THIS ISSUE**



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Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Linda Dupree, Editorial Assistant  
Dana Sholes, Editorial Assistant  
Rhonda Wright, Editorial Assistant

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

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8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
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**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

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volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02
16:01	07/02/01	06/11/01	09/04/01	07/17/01	08/01/01	08/20/01	05/00/02	08/31/01	09/20/01	05/00/02	03/29/02
16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
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16:04	08/15/01	07/25/01	10/15/01	08/30/01	09/14/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
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16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
**(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

**U.S. Department of Justice**

Civil Rights Division

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JDR:GS:DCM:jdh  
DJ 166-012-3  
2001-0873  
2001-0968

*Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128*

April 19, 2001

David A. Holec, Esq.  
City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to five annexations (Ordinance Nos. 00-163, 00-164, 01-09, 01-10, and 01-11) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on March 19 and 29, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require and objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Finally, we wish to take this opportunity to inform you that beginning January 29, 2001, Section 5 submissions sent to the Attorney General, other than through the United States Postal Service, should be addressed, or may be delivered to: Chief Voting Section, Civil Rights Division, Department of Justice, 1800 G. Street, N.W., Room 7254, Washington, D.C. 20006. Our postal box address (P.O. Box 66128, Washington, D.C. 20035-6128) remains unchanged.

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

**TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CHAPTER 26 – MEDICAL ASSISTANCE**

**Notice of Rule-making Proceedings** is hereby given by the DHHS – Division of Medical Assistance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 10 NCAC 26B .0128 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 108A-25(b); 108A-54; 1915 (g) of the Social Security Act; 42 CFR 441.153

**Statement of the Subject Matter:** This Rule is being implemented to define state criteria for a new Medicaid service for individuals under 21. This Rule specifies criteria for Psychiatric Residential Treatment Facility (PRTF).

**Reason for Proposed Action:** In the 1999 Session of the North Carolina General Assembly, the Legislature mandated that DHHS take certain steps to improve residential services to children. The definition was developed by a work group, chaired by the Deputy Secretary as a part of working on residential services for children under 21. This work group was composed of Division of Mental Health, Division of Medical Assistance, Division of Social Services, area programs and subcommittees of providers.

**Comment Procedures:** Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, 2504 Mail Service Center, Raleigh, NC 27699-2504.

**Citation to Existing Rule Affected by this Rule-making:** 15A NCAC 02H .0801-.0808, .0810 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A; 150B-23

**Statement of the Subject Matter:** The proposed amended rules will set out certification criteria for laboratory facilities performing any tests, analyses, measurements, or monitoring required under G.S. 143, Article 21 or any rules adopted thereunder, and to update the fees for certification. The rules apply to laboratory facilities which perform analyses for persons subject to G.S. 143-215.1, 143-215.63, et seq.; the Environmental Management Commission Rules for Surface Water Monitoring and Reporting (15A NCAC 02B .0500); Groundwater rules (15A NCAC 02L .0100, .0200, and .0300); Waste Not Discharged to Surface waters rules (15A NCAC 02H .0200); Point Source Discharges to the Surface Waters rules (15A NCAC 02H .0100), Local Pretreatment Programs (15A NCAC 02H .0900), and the Underground Storage Tank Program of the Division of Waste Management.

**Reason for Proposed Action:** The agency staff is required to ensure that the most recently promulgated methods and technology are used in reporting data to the State of North Carolina. The amendments proposed reference the most currently updated methodology for analysis of water and wastewater determinations. Certifications are proposed to include those facilities that were previously exempted from certification due to the nature of the analyses and staff constraints. Additional analytical methods have been included which were previously not promulgated by the EPA, or for which technology was not readily available at the time of the last amendment. The fee structure proposed for amendment will ensure the viability of the certification program and its purpose. These rules may be filed as temporary rules.

**Comment Procedures:** Comments on this Notice of Rule-making Proceedings may be submitted to Steve Tedder, DENR-DWQ Chemistry Laboratory, 1623 Mail Service Center, Raleigh, NC 27699-1623, (919) 733-3908 ext. 202, or by email to Steve.Tedder@ncmail.net.

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**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

**Notice of Rule-making Proceedings** is hereby given by the NC Environmental Management Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**CHAPTER 07 – COASTAL MANAGEMENT**

**Notice of Rule-making Proceedings** is hereby given by the Coastal Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of

RULE-MAKING PROCEEDINGS

rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07B - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-106 through 113A-111

Statement of the Subject Matter: Land Use Planning Guidelines

Reason for Proposed Action: In November 1998, the Coastal Resources Commission (CRC) authorized the appointment of the Land Use Plan Review Team to evaluate the Coastal Area Management Act (CAMA) land use planning program and make recommendations for improvement. Based on the recommendations submitted in September 2000, the CRC is revising its land use planning guidelines (Subchapter 07B). The revised guidelines aim to improve the quality of local plans by better supporting the purposes and goals of CAMA. The rules include simple, clear requirements for land use plans, improved land suitability analysis and management topics to tie land use plans to CAMA goals.

Comment Procedures: Comments may be submitted to Kathy Vinson, Senior Planner, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808.

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CHAPTER 07 – COASTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by the Coastal Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07K - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-119.1

Statement of the Subject Matter: High Hazard Flood AEC Exemption

Reason for Proposed Action: The proposed amendment will allow an exemption to be issued in lieu of a CAMA minor permit for single family residences located within the High Hazard Flood AEC (excluding the Ocean Erodible and Inlet Hazard AECs).

Comment Procedures: Written comments may be submitted to Charles S. Jones, Assistant Director of Permitting and Enforcement, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808.

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CHAPTER 07 – COASTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by the Department of Environment and Natural Resources in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07L - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-112; 113A-124

Statement of the Subject Matter: Local Planning and Management Grants

Reason for Proposed Action: The Department of Environment and Natural Resources is revising the funding rules for Local Planning and Management Grants to local governments. These grants provide funding assistance for local government land use plans, as required by the Coastal Area Management Act (CAMA), and coastal planning and management projects within North Carolina's coastal area. These changes are based on the recommendations of the Land Use Plan Review Team, which was appointed by the Coastal Resources Commission to evaluate the current program and make recommendations for improvement. The revisions include a more cost effective framework for funding land use plans and incentives to improve the level of implementation.

Comment Procedures: Written comments may be submitted to Kathy Vinson, Senior Planner, Division of Coastal Management, 151-B, Hwy 24, Hestron Plaza II, Morehead City, NC 28557, 252-808-2808.

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CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

Notice of Rule-making Proceedings is hereby given by the North Carolina Wildlife Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10F .0311, .0323 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-3; 75A-15

Statement of the Subject Matter: No wake zones

**RULE-MAKING PROCEEDINGS**

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**Reason for Proposed Action:** *The Burke County Board of Commissioners and the Vance County Board of Commissioners initiated the no-wake zones pursuant to G.S. 75A-15 to protect public safety in the area by restricting vessel speed. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to G.S. 150B-21-1(a1) following this abbreviated notice.*

**Comment Procedures:** *The record will be open for receipt of written comments and must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27604-1188.*

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**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 64 - BOARD OF EXAMINERS FOR SPEECH  
AND LANGUAGE PATHOLOGISTS AND  
AUDIOLOGISTS**

**Notice of Rule-making Proceedings** *is hereby given by the NC Board of Examiners for Speech & Language Pathologists & Audiologists in accordance with G.S. 150B-21.2. The agency*

*shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rule Affected by this Rule-making:** *21 NCAC 64 .0210, .0306 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the Rule-making:** *G.S. 90-304(a)(3); 90-640*

**Statement of the Subject Matter:**

*21 NCAC 64 .0210 – Requirements for identification badges for licensees and assistants*

*21 NCAC 64 .0306 - Defines term "certified technicians"*

**Reason for Proposed Action:**

*21 NCAC 64 .0210 – Need to codify rule for ID badges and exemption*

*21 NCAC 64 .0306 - A misunderstanding came to the Board's attention concerning qualifications for exempt technicians*

**Comment Procedures:** *Written comments may be submitted to John C. Randall, PO Box 1010, Durham, NC 27702.*

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Motor Vehicles intends to amend the rules cited as 19A NCAC 03D .0801; 03J .0101-.0102, .0201-.0204, .0206-.0207, .0305-.0306, .0308, .0401-.0402, .0501-.0504, .0507, .0601-.0604, .0703, .0801-.0802, .0901-.0904, .0906. Notice of Rule-making Proceedings was published in the Register on March 1, 2001.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: A demand for a public hearing must be made in writing and mailed to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501. The demand must be received within 15 days of this Notice.

Reason for Proposed Action:

19A NCAC 03D .0801 – The rule is proposed for amendment as a result of changes to G.S. 20-96 in the 2000 Sessions of the General Assembly. In House Bill 1840, Section 25.11, ratified June 30, 2000, language was added which allowed a law enforcement officer to seize or detain any commercial vehicle operating under the authority of a motor carrier when the motor carrier has been assessed a fine pursuant to G.S. 20-17.7 and that fine has not been paid. Section (g) of this Rule is being deleted because conditions for penalty are incorporated into G.S. 20-96.

19A NCAC 03J .0101-.0102, .0201-.0204, .0206-.0207, .0305-.0306, .0308, .0401-.0402, .0501-.0504, .0507, .0601-.0604, .0703, .0801-.0802, .0901-.0904, .0906 - Rules are proposed for amendment to implement technical changes in terminology. Fee changes are proposed pursuant to G.S. 20-324. Additional amendments are proposed to reflect statutory changes and provisions in the Code of Federal Regulations.

Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501, by July 16, 2001.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)
None

CHAPTER 03 – DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03D – ENFORCEMENT SECTION

SECTION .0800 – SAFETY RULES AND REGULATIONS

19A NCAC 03D .0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-185. Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver shall be determined by his previous seven days of operation.
(2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina shall be exempt from the provisions of Part 391.11(b)(1) and may be exempt from provisions of Part 391.41(b)(1) through (11) where applicable and therefore shall be authorized for intrastate operation if approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles. These drivers shall continue to be exempt upon completion of a medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer. After a medical review by the Exemption Review Officer, a driver may be granted a waiver not to exceed a period of two years based on the type and severity of the condition. The Exemption Review Officer shall follow the guidelines established for variances from the Federal Motor Carrier Safety Regulations for intrastate found in 49 CFR, Part 350.341.

(c) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:

- (1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;
- (2) It is being used to transport either:
  - (A) agricultural products, or
  - (B) farm machinery, farm supplies, or both, to and from a farm;
- (3) It is being operated solely within this State and within 150 air-miles of the farmer's farm;
- (4) It is not being used in the operation of a for-hire motor carrier; and
- (5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.

(d) Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396) which does not display a current approved State inspection certificate as provided in G.S. 20-183.2 must display a current approved federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the federal inspection certificate shall be displayed on the outside of the vehicle in a readily visible location on, or in the immediate vicinity of, the driver's door exclusive of the window or rear view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following legible information:

- (1) The date of inspection;
- (2) Name and address of the motor carrier or other entity where the inspection report required by 49CFR 396.21(a) is maintained;
- (3) Information uniquely identifying the vehicle inspected; and
- (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.

(e) The Commissioner may adopt fines for out-of-service criteria. Such fines, as allowed by G.S. 20-17.7, may not exceed the fines adopted by the Commercial Motor Vehicle Safety Alliance that are in effect on the date of the violations. The commercial motor vehicle out-of-service maximum civil fine schedule shall be maintained in the Office of the Commissioner of the Division of Motor Vehicles, be available for public inspection, and be updated annually on the first day of April. The out-of-service maximum civil fine schedule shall not apply to educational contacts or North American Standard Level-V inspections approved by the Director of the DMV Enforcement Section and the Commissioner of Motor Vehicles. An educational contact for the purpose of this code shall mean a pre-planned, public safety inspection activity, focusing on commercial motor vehicle safety awareness and compliance.

(f) Any fines assessed for violation of an out-of-service criteria shall be assessed against the motor carrier of the commercial motor vehicle.

~~(g) Any vehicle being operated under the authority of a motor carrier which has been assessed a fine or fines for violation of an out-of-service criteria shall not be released for operation until the violation is corrected or the out-of-service condition is satisfied and all fines assessed for violation of the out-of-service criteria are paid. Where a motor carrier is assessed fines for a driver out-of-service condition, the commercial motor vehicle shall not be released for operation until such fines assessed to the motor carrier for violation of the out-of-service criteria by the driver are paid.~~

~~(h)(g)~~ Whenever a motor carrier of a commercial motor vehicle shall have a valid defense to the enforcement of the collection of fines for violation of out-of-service criteria, such motor carrier shall pay such fine to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles.

~~(i)(h)~~ All Code of Federal Regulations (CFR) Parts cited in this Section are incorporated herein by reference including any subsequent amendments. A copy of the CFR is available from the Office of Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a cost set by that office.

Authority G.S. 20-17.7; 20-2; 20-37.22; 20-96; 20-183.2(a); 20-381.

**SUBCHAPTER 03J - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTORS**

**SECTION .0100 – COMMERCIAL DRIVER TRAINING SCHOOLS**

**19A NCAC 03J .0101 PURPOSE OF REGULATIONS**

G.S. 20, Article 14 provides for the licensing and regulation of commercial driver training schools and instructors. Pursuant to the authority contained in this law, the Commissioner of Motor Vehicles has hereby adopted the rules in this Subchapter concerning the administration and enforcement of that Article. These Rules establish minimum standards for the operation of commercial ~~truck~~-driver training schools and will be used by the Division of Motor Vehicles in administering Article 14.

Authority G.S. 20-320 through 20-328.

**19A NCAC 03J .0102 DEFINITIONS**

For the purpose of this Subchapter, the following definitions shall apply:

- (1) "Actively Enrolled" means any student who is neither a graduate nor has failed to complete his or her course.
- (2) "Base Period" means a six-month period from January 1 through June 30 or from July 1 through December 31.

**PROPOSED RULES**

- (3) "Commercial ~~Truck~~-Driver Training School" means any enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either in class or behind the wheel, or both, to operate or drive a commercial motor vehicle unit, ~~truck-tractor-trailer combination unit~~, and charging a consideration or tuition for such services.
- (4) "Constructive Notice" means a student's notice of intention to withdraw from a course by failing to attend residence instructional facilities for a period of three consecutive days on which that class meets.
- (5) "Cooling off Period" means five days from the time the student is given or mailed a signed copy of his completed contract.
- (6) "Enrollment contract" means any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase a course from a school.
- (7) "Fail to Complete" means any student who does not fully complete the required 160 hours of the lessons or classes required by the Division as constituting the full course of study and who cancels by any of the methods prescribed, shall be deemed to have "failed to complete" his or her course.
- (8) "Field Training" means off-road training in and around the truck. Refer to Rule .0306(2)(b), (2)(c), (2)(e), and (2)(i) of Section .0300.
- (9) "Foreign Commercial ~~Truck~~-Driver Training School" means an enterprise located outside North Carolina which solicits, advertises, or offers commercial motor vehicle truck driver training to residents of North Carolina.
- (10) "General Job or Earnings Claim" means any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.
- (11) "Graduate" means any student who fully completes the required 160 hours of the lessons or classes required by the Division and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.
- (12) "Job or Earnings Claim" means any general or specific job or earnings claim.
- (13) "Media Advertisement" means any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are available from a school or distributed by its sales representatives.
- (14) "Most Recent Base Period" means the latest base period.
- (15) "New Course" means any course which has a substantially different course content and occupational objective from any course previously offered by the school and which has been offered for a period of time less than six months.
- (16) "Prospective Student" means any person who seeks to enroll in a course.
- (17) "Recruiter/Salesman" means any person who is employed by a commercial truck driver training school, directly or indirectly, to recruit students for a school. This definition includes persons who are employed by another person who is a direct employee or broker for a school.
- (18) "Refresher Course" means a minimum 80-hour course which offers classroom and behind the wheel instruction for drivers who have previously held a CDL, Class A, or Chauffeurs License.
- (19) "Seminar" means a course of 40 hours or less offering educational materials and classroom instruction only in order to prepare a student for an examination given by the State for a driver's license.
- (20) "Specific Job or Earnings Claim" means any express claim or representation concerning the employment opportunities available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.
- (21) "Student" means any person who has signed an enrollment contract with a school and not canceled that contract before the cooling-off-period, specified in this Rule, has ended.
- (22) "Total Contract Price" means the total price for the enrollment contract, including charges for registration, ancillary services, and any finance charges.

Authority G.S. 20-320; 20-321.

**SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL TRUCK DRIVER TRAINING SCHOOLS**

**19A NCAC 03J .0201 REQUIREMENTS**

The Division shall not issue a commercial ~~truck~~-driver training school license to any individual, partnership, group, association, or corporation unless:

- (1) ~~the~~-The individual, partnership, group, association, or corporation has at least one motor vehicle registered or leased in the name of the school, which vehicle has been inspected by a representative of the Division and vehicle insurance certified as required by

**PROPOSED RULES**

- (2) this Subchapter for use by the school for driver training purposes and driver instruction.
- (2) The individual, partnership, group, association, or corporation has at least one person licensed by the Division as a commercial ~~truck~~-driver training instructor for that school.
- (3) Each manager or owner-operator of a commercial ~~truck~~-driver training school or branch shall:
  - (a) be of good moral character;
  - (b) be at least 18 years of age;
  - (c) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the ~~10~~ five years immediately preceding the date of application; and
  - (d) not have had a revocation or suspension of his operator's or chauffeur's license in the two years immediately preceding the date of application.
- (4) In the case of a foreign commercial ~~truck~~ driver training school, recruiting in North Carolina, the school submits the following items to the Division:
  - (a) a copy of the school's license;
  - (b) a course description, including topics taught and the length of the course;
  - (c) a list of equipment available for training;
  - (d) a copy of the contract complete with the fee charged;
  - (e) the names of the persons who represent the school in North Carolina; and
  - (f) a surety bond in the amount of thirty thousand dollars (\$30,000) for schools offering courses of instruction of 160 hours or more whether in-state or foreign and ten thousand dollars (\$10,000) for schools offering seminar training only.

Provided, Subparagraph (1) and (4)(c) of this Rule shall not apply to schools offering seminar training only.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0202 ORIGINAL APPLICATION**

Each original application for a commercial ~~truck~~-driver training school license shall consist of the following:

- (1) Application for license,
- (2) Personal history statement of owner-operator or manager to include full name, place of birth, date of birth, marital status, permanent address, social security number, employment history, and financial status,
- (3) Proposed plan of operation,
- (4) Proof of liability insurance,
- (5) Sample copies of contracts,

- (6) A check or money order in the amount of ~~forty dollars (\$40.00)~~ eighty dollars (\$80.00). This fee is due for both original and renewal applications for license,
- (7) Certificate of assumed name,
- (8) Surety bond.

Items (1), (2) and (3) of this Rule shall be provided upon approved forms issued by the Division.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0203 RENEWAL APPLICATIONS**

Renewal applications shall be made ~~annually between May 1 and June 10 of each year~~ within 60 days prior to the expiration of license. All licenses ~~expire on June 30 of each year~~ expire two years after the date the license is issued and no school is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed and renewal of such license must be by the same process as required for an entirely new school, with all forms and certifications being required.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0204 DUPLICATE COPIES**

All applications, either original or renewal, for a commercial ~~truck~~ driver training school or branch shall be completed in duplicate. The original copy of each form shall be submitted to the Enforcement Section of the Division of Motor Vehicles at the following address: 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001. A copy of each form shall be filed at the place of business.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0206 BRANCH OFFICES**

Any school desiring to open a branch shall make application for such branch on forms furnished by the Division in the same manner and to the same extent as for an original license. A commercial ~~truck~~-driver training school may operate a branch office anywhere in the state provided:

- (1) The branch meets all the requirements of the principal place of business.
- (2) The branch is properly identified as a "branch office" by a permanent sign which indicates the location of the principal place of business and which is visible to the general public.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0207 SURRENDER OF LICENSES**

Any licensed commercial ~~truck~~-driver training school or branch which ceases to carry on the business of giving instruction in the driving of commercial motor vehicles or which has a change of ownership shall, within five days, surrender its commercial ~~truck~~ driver training school license and all instructor licenses issued to driver training instructors employed by the school.

*Authority G.S. 20-320 through 20-328.*

**SECTION .0300 - SCHOOL LOCATION: PHYSICAL FACILITIES: AND COURSES OF INSTRUCTION**

**19A NCAC 03J .0305 INSPECTIONS**

The Division shall make periodic inspections (at least annually) of schools and branches to determine compliance with statutes and rules. The inspection shall be made during regular business hours by authorized representatives of the Division. Inspections shall include examination of all school records, contracts, classroom facilities, training devices, instructional materials and instructional methods, vehicles, and any other item required by law or regulation.

Each owner, partner, associate, corporate officer, or employee of any commercial ~~truck~~-driver training school shall cooperate with the Division's representative and, upon demand, shall exhibit all records, instructional aids, equipment, and any other items which are required for the inspection. Refusal to permit inspections shall be grounds for revocation of the license. Records shall be retained by the school for a period of three years.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0306 COURSE OF INSTRUCTION**

(a) The commercial ~~truck~~-driving course to be taken by licensed persons who are 18 years old or older must meet the following requirements:

- (1) Minimum hours of instruction:
  - (A) classroom instruction, including testing 50 hours
  - (B) field instruction 50 hours
  - (C) highway behind-the-wheel training 20 hours
  - (D) observation (highway behind-the-wheel) 40 hours

Total - 160 hours

The hours of instruction may be expressed in credit hours provided the school is accredited by an accrediting agency recognized by the United States Department of Education and the conversion ratio of that accrediting agency is properly used.

- (2) Content of classroom and behind-the-wheel instruction:
  - (A) laws relating to interstate and intrastate operations;
  - (B) pre-trip inspection;
  - (C) coupling and uncoupling of combination units, if the equipment to be driven includes such units;
  - (D) placing the vehicle in operation;
  - (E) use of the vehicle's controls and emergency equipment;
  - (F) operation in inner-city and interstate highway traffic and passing;
  - (G) turning the vehicle;
  - (H) braking and slowing the vehicle by means other than applying the brakes;
  - (I) backing and parking the vehicle;
  - (J) experience operating vehicles with a minimum gross vehicle weight of 49,000 pounds; and
  - (K) completing Driver's Daily Log books.
- (3) Other requirements:

- (A) the 160 hours of instructions required by this Rule shall be completed in no less than four calendar weeks;
- (B) three hours of the 20 hours of behind-the-wheel highway training must be completed by each student between dusk and dawn;
- (C) one vehicle must be provided for each three students during highway training. Four students per vehicle are permitted if the vehicle has been inspected and approved by the Division. The Division shall approve the vehicle if it determines the vehicle will seat four people. No more than four students per vehicle and no more than four vehicles per instructor shall be allowed for field training; and
- (D) a Driver's Daily Log must be kept for each student to reflect the 160 hours of instruction.

(b) Credit for Prior Instruction. Credit for prior instruction or training given by another agency or school may be granted. Such credit may be granted by the school to which the candidate is applying if the prior instruction or training is substantially equivalent to the corresponding part or parts of the course required by North Carolina law and if such credit is confirmed and authorized as equivalent by the Enforcement Section of the Division.

(c) In addition to the course requirements of Paragraph (a) of this Rule, schools may offer a "Refresher Course" which shall meet the following requirements:

- (1) Minimum hours of instruction shall total 80 hours as follows:
  - (A) Classroom instruction, labs, and testing 25 hours
  - (B) Field instruction 25 hours
  - (C) Highway behind the wheel training 10 hours
  - (D) Observation (highway behind the wheel) 20 hours

Total - 80 hours

The hours of instruction may be expressed in credit hours provided the school is accredited by an accrediting agency recognized by the United States Department of Education and the conversion ratio of that accrediting agency is properly used.

- (2) Content of Classroom and behind the wheel instruction shall be as follows:
  - (A) Laws relating to interstate and intrastate operations;
  - (B) Pre-trip inspection;
  - (C) Coupling and uncoupling of combination units, if the equipment to be driven includes such units;
  - (D) Placing the vehicle in operation;
  - (E) Use of the vehicle's controls and emergency equipment;
  - (F) Operation in inner-city and interstate highway traffic and passing;
  - (G) Turning the vehicle;

- (H) Braking and slowing the vehicle by means other than applying the brakes;
  - (I) Backing and parking the vehicle;
  - (J) Experience operating vehicles with a minimum gross weight of 49,000 pounds; and
  - (K) Completing Drivers Daily Log books.
- (3) Other requirements are as follows:
- (A) The 80 hours of instruction required by this Rule shall be completed in no less than two calendar weeks;
  - (B) Two hours of the 10 hours behind the wheel highway training shall be completed by each student between dusk and dawn;
  - (C) One vehicle must be provided for each three students during highway training. Four students per vehicle are permitted if the vehicle has been inspected and approved for such use by the Division. The Division shall approve the vehicle if it determines the vehicle will seat four people. No more than four students shall be allowed per vehicle for field training; and;
  - (D) A drivers log must be kept for each student to reflect the 80 hours of instruction.

Authority G.S. 20-321; 20-322; 20-323.

**19A NCAC 03J .0308 REPORTS TO BE SUBMITTED**

- (a) Every commercial ~~truck~~-driver training school offering a full program shall submit to the Division the following reports:
- (1) A schedule of classes for each licensing period.
  - (2) A class roster as of the first day of class, which roster shall include the name, address, telephone number, and driver's license number of each student.
  - (3) A copy of each student's contract(s).
  - (4) A list of salesmen/recruiters working for the school (directly or indirectly) at the beginning of the licensing period, with additions or deletions to be filed within 30 days of such change.
- (b) Every commercial ~~truck~~-driver training school offering seminars only shall submit and obtain approval of a course plan as required in Rules .0201 and .0306 of this Subchapter at least 30 days prior to the class. It shall also submit items in Subparagraphs (a)(1) and (a)(4) of this Rule.
- (c) Every commercial ~~truck~~-driver training school offering a "refresher course" shall submit in addition to the requirements of Paragraph (a) of this Rule, a seven-year driving record attached to each student's contract.

Authority G.S. 20-321; 20-322.

**SECTION .0400 – MOTOR VEHICLES USED IN INSTRUCTION**

**19A NCAC 03J .0401 VEHICLE EQUIPMENT**

- (a) Behind-the-wheel instruction of students in commercial ~~truck~~-driver training schools shall be conducted in motor vehicles owned or leased by the school. All vehicles used for the purpose of demonstration and practice shall:
- (1) If used for field instruction be equipped with:
    - (A) seatbelts as required by Federal and State law;
    - (B) an outside rearview mirror mounted on the right side of the vehicle;
    - (C) a heater, defroster, turn signals and brakelights; and
    - (D) all other equipment required by G.S. 20 except that a working speedometer is not ~~required, required, and the tire tread depth requirement may be met by using recapped tires so long as no cord or fabric is showing.~~
  - (2) Bear conspicuously displayed signs with the words "Student Driver" in letters not less than six inches in height on both the front and rear of the vehicle and also bear conspicuously displayed signs with the name and location of the school in letters not less than ~~one and one-half~~ three inches in height on both sides of the power unit and on the back of the trailer.
  - (3) Shall meet the safety requirements for commercial motor vehicles as found in CFR 49 Parts 390-397.

(b) No school equipment shall be used to transport property or persons for compensation, other than a properly enrolled student, except when school equipment is used by certified third party examiners in accordance with the requirements of 19A NCAC 03B .0700 of these Rules, while conducting third party testing, and the school may charge a reasonable fee for the use of the school's equipment.

Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327; 20-328.

**19A NCAC 03J .0402 REGISTRATION: INSURANCE: INSPECTION**

- (a) Each vehicle used by the school shall be titled and/or registered as required by G.S. 20 and bear a current inspection certificate.
- (b) Each vehicle used by the school shall be insured by a company licensed to do business in North Carolina against liability in the amount of at least ~~twenty thousand dollars (\$20,000)~~ twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one accident, fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident, and one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident. This insurance coverage shall be secured on an annual basis. In the event coverage for any vehicle used for driver instruction or training shall not be renewed, the school shall give written notice to the Division at least 10 days prior to the expiration date of the coverage. A certificate of insurance coverage shall be filed by the insurance underwriter with the Division. Cancellation shall

be accomplished upon 15 days prior written notice to the Division by the insurance underwriter.

(c) Each vehicle used by a school shall be listed and inspected in the manner prescribed ~~on Form 605, in CFR 49 Part 396.~~ In addition, each vehicle shall be inspected and approved by a representative of the Division before it is used. Each vehicle shall be inspected and approved by a representative of the Division annually and at any other reasonable time as indicated by the circumstances.

(d) Vehicles used for off-road field training must be titled, but are not required to meet North Carolina registration requirements.

*Authority G.S. 20-320 through 20-328.*

**SECTION .0500 – REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR**

**19A NCAC 03J .0501 REQUIREMENTS**

(a) A Class I instructor is one entitled to conduct ~~truck~~-driver training in the classroom, on the field and on the road. Each Class I instructor shall:

- (1) Be at least 21 years of age, have at least two years experience operating a Class A vehicle and hold a valid Class A license; provided, on and after April 1, 1992 each instructor must hold a valid Class A commercial license from his state of residence.
- (2) Not have been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, in the 10 years immediately preceding the date of application.
- (3) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (4) Have graduated from high school or hold a high school equivalency certificate or relevant education, training and experience as determined by the Division.
- (5) Not have had convictions for moving violations totaling seven or more points in the year preceding the date of application.
- (6) Have evidence of United States Department of Transportation certification and qualify by experience or training, or both, to instruct students in the safe operation of commercial motor vehicles. ~~truck-tractor-trailer combination units.~~

(b) A Class II instructor is one entitled to conduct ~~truck~~-driver training in the classroom and on the field only. Each Class II instructor shall:

- (1) Not have been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, in the 10 years immediately preceding the date of application.
- (2) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (3) Have graduated from high school or hold a high school equivalency certificate or relevant

education, training and experience as determined by the Division.

- (4) Qualify by experience or training, or both, to instruct students in the safe operation of commercial motor vehicles. ~~truck-tractor-trailer combination units.~~

(c) A Class I or II instructor-trainee is one entitled to assist a licensed Class I or II instructor while his instructor's license application is pending at the Division. The Division must be notified in writing within five days of the date the trainee is hired. An instructor-trainee of either class:

- (1) may work in that capacity for only 30 days from the date he is hired;
- (2) may instruct in the classroom and on the field only with a licensed instructor present at all times;
- (3) may not instruct or accompany students on the road until licensed; and
- (4) must wear an identification badge which clearly identifies the individual as an instructor-trainee.

*Authority G.S. 20-320; 20-321; 20-322; 20-323; 20-324; 20-325; 20-326; 20-327; 20-328.*

**19A NCAC 03J .0502 ORIGINAL APPLICATION**

Each original application for a commercial ~~truck~~-driver training instructor license shall consist of:

- (1) A combination application and personal history form which must be completed and signed by the applicant;
- (2) A physical examination report completed and signed by a licensed physician;
- (3) Satisfactory evidence of high school graduation or equivalency;
- (4) A driver license record check for the previous three years;
- (5) Consent form for background information;
- (6) A check or money order in the amount of sixteen dollars (\$16.00); and eight dollars (\$8.00).
- (7) Five-year criminal history check.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0503 RENEWAL APPLICATION**

Renewal application shall be made by an instructor within 60 days prior to the expiration of license, annually between May 1 and June 20 of each year. All licenses issued expire two years after the date the license is issued on June 30 of each year and no instructor is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being required.

*Authority G.S. 20-320 through 20-328.*

**19A NCAC 03J .0504 DUPLICATE COPIES**

All applications, either original or renewal, for a commercial ~~truck~~-driver training instructor license shall be completed in duplicate. The original copy of each form shall be submitted to the Enforcement Driver License Section of the Division of Motor Vehicles. A copy of each form shall be filed at the place of business.

Authority G.S. 20-320 through 20-328.

**19A NCAC 03J .0507 SURRENDER OF LICENSES**

Any licensed commercial ~~truck~~-driver training instructor who ceases to give instruction in the driving of motor vehicles for the school for which he is licensed shall surrender his instructor's license within five days. The owner, partner, or chief corporate officer of the school shall be responsible for the return of the instructor's license to the Division on termination of employment of any instructor.

Authority G.S. 20-320 through 20-328.

**SECTION .0600 – CONTRACTS**

**19A NCAC 03J .0601 REQUIREMENTS**

Commercial ~~truck~~-driver training school contracts for students are required if the course of instruction contracted for by the student is a refresher course or a course of 160 hours or more. The contract shall contain, but is not limited to, the following information:

- (1) The agreed total contract charges and full terms of payment thereof.
- (2) The number, nature, time, and extent of lessons contracted for, including:
  - (a) minimum hours of instruction as required in Rule .0306 of this Subchapter.
  - (b) rate for use of school vehicle for a driver's license road test, if an extra charge is made.
- (3) A statement which reads substantially as follows: "This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein shall bind neither the school nor the student."
- (4) A statement which reads as follows: "This school is licensed by the State of North Carolina, Division of Motor Vehicles."
- (5) A statement which reads as follows: "If you, as a student, are unable to settle a dispute with the school, please direct your grievances to the North Carolina Division of Motor Vehicles, Enforcement Section, 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001."

Authority G.S. 20-321; 20-322; 20-323.

**19A NCAC 03J .0602 PROHIBITED CONTRACT PROVISIONS**

Commercial ~~truck~~-driver training school contracts shall not contain the following:

- (1) The statement "no refund" or its equivalent.

- (2) Any statement to the effect that a driver's license is guaranteed or otherwise promised as a result of the driver's license training course.

Authority G.S. 20-320 through 20-328.

**19A NCAC 03J .0603 FILING OF CONTRACT WITH THE DIVISION**

The commercial ~~truck~~-driver training school shall file with the Division sample copies of all written contracts and agreements at the time of the original application and also at any time thereafter when alterations to contracts are proposed.

Authority G.S. 20-320 through 20-328.

**19A NCAC 03J .0604 CONTRACT PROVISIONS**

(a) The school must give the prospective student a completed copy of the enrollment contract at the time the prospective student signs the contract or upon the school's receipt of an enrollment contract completed entirely by mail. The enrollment contract must be written in the same language as the oral sales presentation, if any, made by the school and must contain the name and address of the school.

(b) The school must place on the enrollment contract the explanation of the prospective student's cooling-off rights required by Rule .0605 of this Section. If the school does not place the notice on the front page of the enrollment contract, the school must place on the front page the following notice: "An explanation of your cancellation and refund rights is on page (page number) of this contract." This notice must be printed in boldface type.

(c) After the school has accepted the enrollment contract of the prospective student, the school must furnish the prospective student with the disclosure of the school's graduation rate and placement rate.

(d) If a school makes a job or earnings claim for a course other than a new course, the school shall disclose the following placement information on the disclosure form entitled, "How Our Students Are Doing." The School shall disclose these figures for individuals who became students during the school's most recent base period:

- (1) the number of students;
- (2) the number and percentage of those students who graduated;
- (3) the number and percentage of those students who remained actively enrolled at the end of that time;
- (4) the number and percentage of graduates who, within four months of leaving the course, obtained employment as ~~truck~~ commercial motor vehicle drivers; and
- (5) the number and percentage of these graduates who refused to provide salary information.

A school may, at its option, include the following statement on the disclosure form: "In evaluating our record, remember not all of our students took this course to get a job as a ~~truck~~ commercial motor vehicle driver. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated."

(e) The disclosure specified by Paragraph (d) of this Rule must be based on the school's actual knowledge of its students'

experiences. Actual knowledge shall be verified, at a minimum, by a list that includes the following information for each student who is counted as obtaining employment in a job for which the course prepared him or her:

- (1) the student's name and address (or telephone number);
- (2) the employer's name;
- (3) the name or title of the job obtained;
- (4) information that indicates that the job was obtained within four months of leaving the course; and
- (5) the student's annual gross salary expressed in increments of two thousand dollars (\$2,000) or an indication of the student's refusal to provide such salary information.

(f) No school shall make any specific job or earnings claim for a new course.

(g) The information required or permitted to be disclosed under Paragraph (d) of this Rule shall be contained in a disclosure form entitled, "How Our Students are doing." The disclosure form shall contain no other information or representations. This form must be mailed to all prospective students who have signed enrollment contracts if a school makes a general job or earnings claim or a specific job or earnings claim.

(h) If a school makes a general job or earnings claim or a specific job or earnings claim that is not substantiated by the disclosure form required by Paragraph (d) of this Rule, the school must not know or have reason to know of facts which would make the claim inapplicable to the school, its enrollees, or a particular geographical area served by the school. A reasonable basis shall consist of a statistically valid and reliable survey which substantiates the claim.

(i) Nothing in Paragraph (d) in this Rule shall be construed as prohibiting schools from making jobs or earnings claims which are substantiated by projections from the "Occupational Outlook Handbook" published by the Bureau of Labor Statistics or by similar projections published by other Federal or State agencies. However, when such claims are contained in non-media advertising, the schools must clearly and conspicuously disclose in immediate conjunction with the claim, any limitations, restrictions, or caveats accompanying or made applicable to those projections in their original source.

(j) A school shall maintain records adequate to disclose the facts upon which each claim covered by this Rule is based. Such records shall be maintained for three years from the date the claim is made and, after compliance with any applicable Federal law concerning the privacy or confidentiality of student records, shall be made available for inspection and copying by DMV officials upon reasonable notice and during regular business hours.

(k) Home study courses shall be accredited by an accrediting agency approved by the United States Department of Education.

*Authority G.S. 20-320 through 20-328*

**SECTION .0700 – BONDING AND ADVERTISING**

**19A NCAC 03J .0703 ADVERTISING**

A commercial ~~truck~~-driver training school may advertise by whatever method it sees fit with the following exceptions:

- (1) The address of a telephone-answering service, when it is not the same as the principal place of business of the school, shall not be shown in any medium of advertising or telephone directory. Nor shall any telephone directory listing or yellow page advertisement show a telephone number for a school unless it also shows a valid address for the principal place of business of the school.
- (2) No advertisement shall indicate in any way that a school can or will issue or guarantee the issuance of a driver's license or imply that preferential or advantageous treatment from the Division can be obtained.
- (3) A school may state in an advertisement that it has been approved and licensed by the Division.
- (4) Commercial ~~truck~~-driver training schools must use the full name, address, and telephone number of their school in all advertising. No advertising shall imply an offer of employment or guarantee employment upon completion.
- (5) If a school makes any job or earnings claims for any course in a media advertisement, the school must include the following disclaimer in this advertisement: "Graduation from this course does not insure that you will get a job. To find out how our graduates have done, send for our job placement record."
- (6) If a school makes any written job or earnings claims about any course, other than a media advertisement, the school must include in that document full disclosures of the school's graduation and placement rates required by Rule .0604 of this Subchapter.
- (7) If a school makes any general job or earnings claims for a new course, that school must make the following disclosure in lieu of those required in Items (5) and (6) of this Rule.
  - (a) In media advertisement: "Since this course is new, we are not able to tell you about the experience of our students in getting jobs."
  - (b) All other, non-media advertisements: "Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or State Employment Office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience."

- (8) Commercial ~~truck~~-driver training schools shall not use advertisements or promotional material which is classified, designated, or captioned, "Men wanted to train for....", "Help Wanted", "Employment", "Business Opportunities", or by words or terms of similar import, so as to represent directly or by implication that employment is being offered, nor shall the word "Free" be used in any advertisement.

Authority G.S. 20-320 through 20-328.

**SECTION .0800 – LICENSE REVOCATION OR SUSPENSION**

**19A NCAC 03J .0801 GROUNDS FOR REVOCATION OR SUSPENSION**

The license of any commercial ~~truck~~-driver training school may be suspended or revoked by the Division if the licensee violates any provision of Article 14, Chapter 20 of the North Carolina General Statutes, or if the licensee violates any rule adopted pursuant to that Article. In addition, a license may be suspended or revoked for any one of the following reasons:

- (1) Conviction of the owner, manager, or any agent or employee of the school of a felony or conviction of any misdemeanor involving moral turpitude.
- (2) Knowingly submitting to the Division false or misleading information relating to eligibility for a license.
- (3) Evidence of substance abuse by the owner, manager, any agent, or employee of the school.
- (4) Failure or refusal to permit an authorized representative of the Division to inspect the school, equipment, records, or motor vehicles used to teach students or failure or refusal to furnish full information pertaining to any and all requirements set forth in the rules in this Subchapter or in the application for the license.
- (5) Failure to maintain adequate standards of instruction, either through lack of qualified instructors or through lack of approved equipment sufficient to adequately perform the course of instruction.
- (6) Employment of any instructor who is not licensed by the Division.
- (7) Failure of new owner to apply for and be licensed by the Division as a school under new ownership and also failure to notify the Division within the specified time of any change in management of the school.
- (8) Aiding or assisting any person to obtain a driver's license by fraud (revocation in this instance shall be permanent).
- (9) Unauthorized possession of application forms or examinations used by the Division to determine the qualification of an applicant for a driver's license.
- (10) Failure of the school to give the student a copy of his contract and also use by the school of a

contract which has not been submitted to and approved by the Division of Motor Vehicles.

Authority G.S. 20-320 through 20-328.

**19A NCAC 03J .0802 INSTRUCTOR LICENSE SUSPENSION OR REVOCATION**

In addition to the grounds for revocation listed in Rule .0801 of this Section, the license of any commercial ~~truck~~-driver training instructor shall be revoked if his driver's license is suspended or revoked or if he accumulates seven or more points, as a result of being convicted of moving violations, in a twelve-month period. Reinstatement of the commercial ~~truck~~-driver training instructor's license shall follow the same procedure as an application for a new license.

Authority G.S. 20-320 through 20-328.

**SECTION .0900 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING SCHOOL RECRUITERS**

**19A NCAC 03J .0901 REQUIREMENTS**

(a) A recruiter is one entitled to recruit or solicit candidates for ~~truck~~ commercial driver training schools. Each recruiter shall:

- (1) Be of good moral character.
- (2) Not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application.
- (3) Have graduated from high school or hold a high school equivalency certificate.

(b) A recruiter/trainee is one entitled to assist a licensed recruiter while his recruiter's license application is pending at the Division. The Division must be notified in writing within five days of the date the trainee is hired. A recruiter/trainee:

- (1) may work in that capacity for only 30 days from the date he is hired;
- (2) must wear an identification badge which clearly identifies the individual as a recruiter/trainee.

Authority G.S. 20-321.

**19A NCAC 03J .0902 ORIGINAL APPLICATION**

Each original application for a commercial ~~truck~~-driver training recruiter license shall consist of:

- (1) A combination application and personal history form which must be completed and signed by the applicant.
- (2) Satisfactory evidence of high school graduation or equivalency.
- (3) Consent form for background information.
- (4) ~~Ten~~ Five year criminal history check.
- (5) Certification by the institutional director that the applicant will be directed to act in accordance with the rules as set forth by the Commissioner.
- (6) Verification that the applicant has read and understands the rules on advertising and

solicitation, and his intent to follow rules as they are set forth.

Authority G.S. 20-321.

19A NCAC 03J .0903 RENEWAL APPLICATION

Renewal application shall be made by a recruiter ~~annually between May 1 and June 20 of each year. within 60 days prior to the expiration of license.~~ All licenses issued expire two years after the date the license is issued on June 30 of each year and no recruiter is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being required.

Authority G.S. 20-321.

19A NCAC 03J .0904 DUPLICATE COPIES

All applications, either original or renewal, for a commercial ~~truck~~-driver training recruiter license shall be completed in duplicate. The original copy of each form shall be submitted to the Enforcement Section of the Division of Motor Vehicles. A copy of each form shall be filed at the place of business.

Authority G.S. 20-321.

19A NCAC 03J .0906 SURRENDER OF LICENSES

Any licensed commercial ~~truck~~-driver training recruiter who ceases to recruit candidates for training for the school for which he is licensed shall surrender his license within five days. The owner, partner, or chief corporate officer of the school shall be responsible for the return of the recruiter's license to the Division on termination of employment of any instructor.

Authority G.S. 20-321.

Nurses) in our state. The Board believes that we could better serve the public's health by allowing those nurses who are not being charged with egregious violations of the Nursing Practice Act to remain in licensed positions with appropriate restrictions to enhance their knowledge, skills or ability to provide safe nursing care. Many of the nurses who come through our disciplinary process could be maintained in licensed nurse positions while completing disciplinary sanctions such as remedial education, monitored practice, or other specified restrictions appropriate to the allegations in the case under these proposed changes. Offering a voluntary surrender without any other mechanism for remediation simply removes the nurse from the workforce and, we believe, is contrary to public interest at this time.

21 NCAC 36 .0231 – Law passed in 1999 with full implementation date of October 1, 2001 (Session Law 1999-320, Senate Bill 951– An Act to Protect Patient's Rights by requiring Name Badges or other identification for Health Care Practitioners).

**Comment Procedures:** Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27601-2129 by 1:00 p.m. on September 27, 2001.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

SECTION .0200 – LICENSURE

21 NCAC 36 .0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), and (8b) are incorporated by reference within this Rule according to G.S. 150B-21.6. In addition, the following definitions apply:

- (1) "Investigation" means a careful and detailed exploration of the events and circumstances related to reported information in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by the Board.
- (2) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.
- (3) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

- (1) drug or alcohol abuse;

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0231 and amend the rule cited as 21 NCAC 36 .0217. Notice of Rule-making Proceedings was published in the Register on April 2, 2001.

Proposed Effective Date: August 2, 2002

Public Hearing:

Date: September 27, 2001

Time: 1:00 p.m.

Location: NC Board of Nursing Office, 3724 National Dr., Suite 201, Raleigh, NC

Reason for Proposed Action:

21 NCAC 36 .0217 – We are moving into a severe shortage of licensed nurses (both Registered Nurses and Licensed Practical

**PROPOSED RULES**

- (2) violence-related crime;
  - (3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
  - (4) commission of any crime which undermines the public trust;
  - (5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
  - (6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
  - (7) practicing or offering to practice beyond the scope permitted by law;
  - (8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
  - (9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
  - (10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
  - (11) harassing, abusing, or intimidating a client either physically or verbally;
  - (12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
  - (13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
  - (14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
  - (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
  - (16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
  - (17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
  - (18) guaranteeing that a cure will result from the performance of professional services;
  - (19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
  - (20) using a license which has been altered;
  - (21) permitting or allowing another person to use his or her license for the purpose of nursing;
  - (22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
  - (23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
  - (24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents;
  - (25) falsifying a client's record or the controlled substance records of the agency; or
  - (26) inappropriately kissing, fondling, touching or engaging in any other activities of a sexual nature with a client while responsible for the care of that individual.
- (d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:
- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
  - (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
  - (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.
- (e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision shall be afforded an administrative hearing pursuant to the provisions of G.S.150B, Article 3A.
- (1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.
  - (2) The following general statutes, rules, and procedures apply and are adopted by reference within this Rule according to G.S. 150B-21.6, unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.
  - (3) Every document filed with the Board of Nursing shall be signed by the person,

applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

- (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges shall be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.
  - (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
  - (B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.
  - (C) The Letter of Charges does not in and of itself constitute a contested case.
- (2) The Letter of Charges shall include the following:
  - (A) a short and plain statement of the factual allegations;
  - (B) a citation of the relevant sections of the statutes or rules involved;
  - (C) notification that a settlement conference shall be scheduled upon request;
  - (D) explanation of the procedure used to govern the settlement conference;
  - (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing shall be scheduled; and
  - (F) if applicable, ~~and in any sanction or remediation in accordance with Board-adopted policy, an offer of voluntary surrender or reprimand also policy may be included. included in specified types of alleged violations of the Nursing Practice Act.~~

(3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

- (1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.
- (2) All parties shall attend or be represented at the settlement conference. The parties shall be prepared to discuss the alleged violations and the incidents on which these are based.
- (3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.
- (4) At the conclusion of the day during which the settlement conference is held, a form shall be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
  - (A) if a settlement is reached, the Board of Nursing shall forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
  - (B) if a settlement cannot be reached, the case shall proceed to a formal administrative hearing.

(j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

- (1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;
- (2) Date, time, and place of the hearing;
- (3) Notification of the right of a party to represent himself or to be represented by an attorney;
- (4) A statement that, pursuant to Paragraph (m) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
- (5) A statement advising the licensee that a notice of representation, containing the name of

licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;

- (6) A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and
- (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) Pre-hearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

- (1) The pre-hearing conference shall be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.
- (2) The pre-hearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
- (3) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) Pre-hearing conferences or administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue shall be determined in accordance with G. S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.

(n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
- (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
  - (A) the full name and home or business address of all persons to be subpoenaed; and
  - (B) the identification, with specificity, of any documents or information being sought.
- (3) Subpoenas shall include the date, time, and place of the hearing and the name and address

of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.

- (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the Hearing Officer of the Board. All other motions for continuance shall be ruled on by the majority of the Board members or Administrative Law Judge sitting at hearing.

(q) All hearings by the Board of Nursing shall be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

- (1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

- (2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the

applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

- (3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing shall be provided to them prior to the receipt of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

- (1) Sworn affidavits may be introduced by mutual agreement from all parties.
- (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and shall be supplied at a reasonable cost.

Authority G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42.

**21 NCAC 36 .0231 EXCEPTIONS TO HEALTH CARE PRACTITIONERS IDENTIFICATION REQUIREMENTS**

(a) The licensed nurse or nurse aide II is not required to wear a readily visible badge or other form of identification in the following direct patient care situations:

- (1) procedures requiring full sterile dress; or
- (2) procedures requiring other protective clothing or covering.

(b) Identification of the licensed nurse or nurse aide may be limited to first name only and level of licensure or listing status when the full name identification may:

- (1) place the personal safety of the nurse or nurse aide II in jeopardy; or
- (2) interfere with the therapeutic relationship between the nurse or nurse aide and client(s).

(c) In all other situations involving the direct provision of health care to clients, the licensed nurse or nurse aide II shall wear or display a readily visible form of identification to include:

- (1) the individual's first and last name; and
- (2) the license, approval to practice title or listing title as required by law, or standard abbreviations for such title.

(d) There shall be written agency policy outlining any exceptions to the requirements consistent with Paragraph (b) of this Rule.

Authority G.S. 90-6; 90-171.43; 90-171.83(a); 90-178.3; 90-640(a)-(d).

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES**

**Rule-making Agency:** *Environmental Management Commission*

**Rule Citation:** *15A NCAC 02H .0103, .0106*

**Effective Date:** *May 11, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 106-399.4; 150B-21.1*

**Reason for Proposed Action:** *These temporary amendments would prevent the Division of Water Quality's permitting rules from being an obstacle for the implementation of emergency measures and procedures that could possibly produce wastewater discharges from emergency decontamination operations. Temporary rulemaking is necessary in order to expedite North Carolina's Foreign Animal Disease Strategic Plan in the event of an emergency as described by G.S. 106-399.4.*

**Comment Procedures:** *Written comments may be submitted to Jeff Poupart, Division of Water Quality, 1617 Mail Service Center, Raleigh, NC 27699. Jeff Poupart may be reached at (919) 733-5083 ext. 527 or Jeff.Poupart@ncmail.net.*

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02H – PROCEDURES FOR PERMITS: APPROVALS**

**SECTION .0100 – POINT SOURCE DISCHARGES TO THE SURFACE WATERS**

**15A NCAC 02H .0103 DEFINITION OF TERMS**

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
- (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
- (3) "Commission" means the Environmental Management Commission.
- (4) "Committee" means the NPDES committee of the Environmental Management Commission.
- (5) "Department" means the Department of Environment, Health, and Natural Resources.
- (6) "Director" means the Director of the Division of Environmental Management, Department of

Environment, Health, and Natural Resources or his designee.

- (7) "Division" means the Division of Environmental Management, Department of Environment, Health, and Natural Resources.
- (8) "EPA" means the United States Environmental Protection Agency.
- (9) "Existing", with respect to implementing the NPDES permitting program, means:
  - (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
  - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
  - (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.
  - (d) For the purpose of this definition, significant construction will be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (10) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.
- (11) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
- (12) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.
- (13) "NPDES" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section

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- 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- (14) "New", with respect to implementing the NPDES permitting program, means:
- (a) Proposed facilities that do not have a NPDES Permit nor have any facilities constructed.
  - (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
  - (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.
  - (d) Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct will be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.
  - (e) For the purpose of this definition, significant construction will be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (15) "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.
- (16) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
- (17) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (18) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (19) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (20) "Point Source Discharge" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
- (21) "POTW" means Publicly Owned Treatment Works.
- (22) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
- (23) "Primary industry" means an industry listed in 40 CFR 122, Appendix A which is hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Environmental Management, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.
- (24) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (25) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (26) "Seafood packing facility" means a business which is primarily engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (27) "Seafood processing facility" means a business which is primarily engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
- (28) "Staff" means the staff of the Division of Environmental Management, Department of Environment, Health and Natural Resources.

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- (29) "Stormwater" is defined in G.S. 143, Article 21.
- (30) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools as well as spas with backwash filter facilities.
- (31) "Tourist Gem Mine" means a business which is primarily engaged in the recreational practice of removing gems and semi-precious stones from mined material.
- (32) "Trout farm" means a facility for the commercial production of trout.
- ~~(33)~~ "Water associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
- ~~(33)~~(34) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

*History Note: Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991; Temporary Amendment Eff. May 11, 2001.*

15A NCAC 02H .0106 FILING APPLICATIONS

- (a) Permit applications shall be filed with the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina, 27626-0535.
- (b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to ensure compliance with all legal procedures.
- (c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities but no earlier than the establishment of effluent limitations.
- (d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.
- (e) Permit applications filed with the Director shall be signed as follows:
  - (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the permit application form originates;
  - (2) in the case of a partnership or a limited partnership, by a general partner;
  - (3) in the case of a sole proprietorship, by the proprietor;

- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.
- (f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened and it shall not be necessary for the Division to issue separate permits for these activities:
  - (1) filter backwash and draining associated with swimming pools;
  - (2) filter backwash from raw water intake screening devices;
  - (3) condensate from residential or commercial air conditioning units;
  - (4) individual non-commercial vehicle washing operations;
  - (5) flushing and hydrostatic testing water associated with utility distribution systems;
  - (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;
  - (7) groundwaters generated by well construction or other construction activities;
  - (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;
  - (9) street wash water; ~~and~~
  - (10) flows from fire ~~fighting-fighting; and~~
  - ~~(11)~~ in the event of an emergency determined in accordance with the provisions of G.S. 106-399.4(a) discharges of water associated with biological or chemical decontamination activities performed as a result of emergency procedures implemented under the provisions of G.S. 106-399.4 that are conducted by or under the direct supervision of State or federal authorities and that meet the following specific conditions:

- ~~(A)~~ the volume of discharge produced by the decontamination activity is too large to be contained on-site;
- ~~(B)~~ the Division of Water Quality is contacted prior to or within two hours of the commencement of the decontamination activity; and
- ~~(C)~~ overland flow or other non-discharge options are deemed to be impractical by the authorities conducting the decontamination activity.

The Director may determine that a facility or a class of facilities should not be deemed to be permitted in accordance with this Rule and the facility or class of facilities shall be required to obtain individual permits or coverage under a general NPDES permit. This determination may be made based upon existing or projected environmental impacts or contravention of water quality standards associated with the particular discharge or discharges.

*History Note: Authority G.S. 106-399.4; 143-215.1(c);*

143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987; January 1,  
1984; November 1, 1978;  
[Temporary Amendment Eff. May 11, 2001.](#)

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**Rule-making Agency:** North Carolina Department of Health  
and Human Services

**Rule Citation:** 15A NCAC 19G .0102

**Effective Date:** May 4, 2001

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 130A-190

**Reason for Proposed Action:** This Rule authorizes the  
Secretary of the Department of Health and Human Services to  
establish a fee of fifty cents (\$0.50) to be added to the sale of the  
"I Care" rabies tags. The fee is to be credited to the  
Spay/Neuter Account. See Section 2 of Senate Bill 1184.

**Comment Procedures:** Comments may be sent to Lee Hunter,  
D.V.M., M.P.H. or Stephanie Kordick, D.V.M; Veterinary Public  
Health Program, 1912 Mail Service Center, Raleigh, NC 27699-  
1912, (919) 733-3410.

**CHAPTER 19 – HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 19G - VETERINARY PUBLIC HEALTH**

**SECTION .0100 - VETERINARY PUBLIC HEALTH**

**PROGRAM**

**15A NCAC 19G .0102 FEES FOR RABIES TAGS,  
LINKS, AND RIVETS**

(a) The Division of [Epidemiology-Public Health](#) shall charge a  
fee to be paid by veterinarians or local health departments for the  
provision of rabies tags, links, and rivets. This fee shall be  
determined on the basis of actual cost plus transportation, and an  
additional five cents (\$0.05) per tag to be used to fund rabies  
education and prevention programs.

(b) [The Division of Public Health shall charge a fee to be paid  
by veterinarians or local health departments for the provision of  
"I Care" rabies tags. This fee shall be determined on the basis of  
actual cost plus transportation, an additional five cents \(\\$0.05\)  
per tag to be used to fund rabies education and prevention  
programs plus an additional fifty cents \(\\$0.50\) per tag. The fifty  
cents fee \(\\$0.50\) per tag shall be credited to the Spay/Neuter  
fund established in G.S. 19A-52.](#)

*History Note:* Authority G.S. 130A-190;  
Eff. January 1, 1982;  
Amended Eff. September 1, 1990;  
Temporary Amendment Eff. July 22, 1997;  
Amended Eff. August 1, 1998.  
[Temporary Amendment Eff. May 4, 2001.](#)

**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

**Rule-making Agency:** NC Department of Transportation,  
Division of Motor Vehicles

**Rule Citation:** 19A NCAC 03G .0205

**Effective Date:** May 18, 2001

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 20-39(b); 90-218

**Reason for Proposed Action:** This Rule is proposed for  
amendment due to concerns expressed to DMV by impacted  
school systems. The school systems have indicated they will be  
unable to fund necessary medical exams by July 1, 2001. Many  
beginning drivers do not have funds to pay for the exams  
themselves. The school systems predict the pool of drivers will  
decrease unless school systems make arrangements for the  
physicals. The school systems must secure agreements from  
local health departments to perform the exams. The school  
systems must develop policies to handle issues resulting from the  
medical report forms including how to treat drivers with medical  
conditions revealed by the medical report forms.

**Comment Procedures:** Any interested person may submit  
written comments on the proposed rules by mailing the  
comments to Emily Lee, NCDOT, 1501 Mail Service Center,  
Raleigh, NC 27699-1501 by November 5, 2001.

**CHAPTER 03 – DIVISION OF MOTOR VEHICLES**

**SUBCHAPTER 03G – SCHOOL BUS AND TRAFFIC  
SAFETY SECTION**

**SECTION .0200 – SCHOOL BUS DRIVER TRAINING**

**19A NCAC 03G .0205 ISSUING OF ORIGINAL  
CERTIFICATE**

Any applicant for certification as a school bus driver shall meet  
the following minimum requirements:

- (1) Legal:
  - (a) Shall be at least 18 years of age with  
at least six months driving experience  
as an operator of a motor vehicle, and  
shall possess a valid North Carolina  
driver license of Class A, B, or C. In  
the event a prospective driver shall  
have his place of residence in another  
state, he may be certified as a school  
bus driver if he submits a copy of his  
driving record from the state in which  
he is licensed before his initial  
certification. Also, he must notify  
both his employer and the N.C.  
School Bus and Traffic Safety Section  
within 30 days of a conviction of any

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- (b) moving violation no matter what type of vehicle he was driving.
- (b) Shall within a period of one year (12 months) immediately preceding certification have on his driving record:
- (i) No more than one conviction of any moving violation;
- (ii) No conviction whatever of:
- (A) Reckless driving;
- (B) Speeding in excess of 15 mph above the posted limit; or
- (C) Passing a stopped school bus;
- (iii) No conviction of a moving violation which was the proximate cause of an accident.
- (c) Shall within a period of two years (24 months) immediately preceding certification have on his driving record no suspension or revocation of the driving privilege other than for such status offenses as:
- (i) Lapsed liability insurance;
- (ii) Failure to appear in court;
- (iii) Failure to comply with out-of-state citation; or
- (iv) A 30 day revocation not accompanied by a subsequent conviction of driving while impaired.
- (d) Shall within a period of five years (60 months) immediately preceding certification have on his driving record:
- (i) No more than three convictions of moving violations of any kind;
- (ii) No more than two convictions of moving violations which were the proximate causes of accidents;
- (iii) No conviction of driving while impaired;
- (iv) No suspension or revocation of the driving privilege other than for:
- (A) Those status offenses enumerated in Paragraph (c) of this Rule;
- (B) Those offenses enumerated in G.S. 20-16(a), subsections (9) and (10).
- (e) Shall have on his driving record no more than one conviction of driving while impaired.
- (f) Shall have no "STOP" entry appearing on his driving record at the time of certification.
- (g) Shall have no record of any conviction of a violation of the criminal code greater than a misdemeanor for a period of at least five years immediately preceding certification. Further, shall never have had in any jurisdiction a conviction of an offense against the public morals, including but not limited to rape and child molestation.
- (h) Shall have a driving record which in its overall character arouses no serious question about the reliability, judgment, or emotional stability of the applicant.
- (i) Shall successfully complete the training course for school bus drivers.
- (2) Physical Standards for School Bus Drivers. Every school bus driver shall:
- (a) Meet the physical standards set forth in The North Carolina Physician's Guide To Driver Medical Evaluation, published in June 1995 by the Division of Epidemiology, North Carolina Department of Health and Human Services, which is available without charge from the School Bus & Traffic Safety Section of the Division of Motor Vehicles including any subsequent amendments and editions.
- (b) On and after July 1, ~~2001~~ 2003 at the time of his original certification as a school bus driver submit a medical report on a form provided by the Division and signed by a ~~physician~~ physician, physician assistant, or nurse practitioner licensed to practice ~~in North Carolina,~~ and submit such a medical form every two years thereafter.
- (c) On or before June 30, ~~2002~~ 2004 if he is certified before June 30, ~~2001~~ 2003 submit a medical report on a form provided by the division and signed by a ~~physician~~ physician, physician assistant, or nurse practitioner licensed to practice ~~in North Carolina~~ and submit such a medical report form every two years thereafter.
- (d) Be required at any time to submit a medical report on a form provided by the Division and signed by a physician licensed to practice in North Carolina if the Division has

good and sufficient cause to believe the driver may not meet the physical standards noted in Subitem (2)(a) of this Rule.

SUBCHAPTER 01B – STATE PERSONNEL COMMISSION

SECTION .0400 – APPEAL TO COMMISSION

History Note: Authority G.S. 20-39(b); 20-218; Eff. April 1, 1989; Amended Eff. August 1, 2000; January 1, 1994; Temporary Amendment Eff. May 18, 2001.

25 NCAC 01B .0438 ESTABLISHMENT OF REASONABLE ATTORNEY FEES BY THE COMMISSION

The Commission's established rates for Commission shall award the reimbursement of legal fees and costs are as follows:

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Rule-making Agency: State Personnel Commission

Rule Citation: 25 NCAC 01B .0438

Effective Date: May 11, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 126-4(11)

Reason for Proposed Action: This Rule is proposed to be amended as a temporary rule due to the Superior Court order issued by the Honorable Howard Manning on December 19, 2000. Judge Manning concluded that the Commission's award of \$125 per hour for attorney's fees in this case was not reasonable and customary due to several different factors as stated in Judge Manning's order. Therefore, Judge Manning ordered that the Commission award additional attorney's fees in this contested case. The commission awarded the original amount based on 25 NCAC 01B .0438.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Delores A. Joyner, Rule-making Coordinator, State Personnel Commission, 1331 Mail Service Center, Raleigh, NC 27699-1331.

- (1) Attorney fees incurred in connection with the contested case proceeding before the Commission and with any successful appeal of a Commission decision in the General Courts of Justice at a maximum rate of one hundred twenty five dollars (\$ 125.00) per hour; at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;
(2) Law Clerk, Paralegal, or Legal Assistant fees at a maximum rate of fifty five dollars (\$ 55.00) per hour; at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;
(3) Travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee rate; and
(4) Costs at the actual cost.

Fees shall not be awarded unless requested by an attorney or the Petitioner and documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

History Note: Authority G.S. 126-4(11); Eff. March 1, 1996; Temporary Amendment Eff. May 11, 2001.

CHAPTER 01 – OFFICE OF STATE PERSONNEL

**APPROVED RULES**

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of April 19, 2001 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
11	NCAC	08	.1337*	15:13 NCR
12	NCAC	10B	.1601	15:05 NCR
15A	NCAC	03J	.0107*	15:05 & 15:10 NCR
15A	NCAC	03O	.0501*	15:10 NCR
15A	NCAC	07J	.0404*	15:12 NCR
15A	NCAC	18A	.3301*	15:13 NCR
15A	NCAC	18A	.3302-.3303	15:13 NCR
15A	NCAC	18A	.3304*	15:13 NCR
15A	NCAC	18A	.3305-.3306	15:13 NCR
15A	NCAC	18A	.3308*	15:13 NCR
15A	NCAC	18A	.3309-.3310	15:13 NCR
15A	NCAC	18A	.3311-.3312*	15:13 NCR
15A	NCAC	18A	.3314-.3315*	15:13 NCR
15A	NCAC	18A	.3316	15:13 NCR
15A	NCAC	18A	.3317-.3318*	15:13 NCR
15A	NCAC	18A	.3320-.3321*	15:13 NCR
15A	NCAC	18A	.3322	15:13 NCR
15A	NCAC	18A	.3325*	15:13 NCR
15A	NCAC	18A	.3326	15:13 NCR
15A	NCAC	18A	.3328	15:13 NCR
15A	NCAC	18A	.3329*	15:13 NCR
15A	NCAC	18A	.3332-.3333*	15:13 NCR
15A	NCAC	18A	.3335*	15:13 NCR
16	NCAC	06D	.0302	15:11 NCR, Eff. May 1, 2001
17	NCAC	07B	.1303*	not required G.S. 150B-1(d)(4), Eff. July 1, 2002
19A	NCAC	02D	.0607*	15:05 & 15:11 NCR
23	NCAC	02D	.0203*	15:10 NCR
25	NCAC	01C	.0811*	14:20 NCR
25	NCAC	01C	.0813*	14:20 NCR
25	NCAC	01I	.2310*	15:08 NCR
26	NCAC	01	.0103*	not required G.S. 150B-21.5(a)(3), Eff. May 1, 2001

**TITLE 11 – DEPARTMENT OF INSURANCE**

**11 NCAC 08 .1337 DENIAL OR WITHDRAWAL OF APPROVAL OF COURSE OR COURSE SPONSOR**

(a) The Board shall deny or withdraw approval of any course or course sponsor upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of the approval;
- (2) the course sponsor or any official or instructor employed by or under contract with the course

- (3) sponsor has refused or failed to comply with any of the provisions of this Section; the course sponsor or any official or instructor employed by or under contract with the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board;
- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;

- (5) the course sponsor has knowingly paid fees to the Board with a check that was dishonored by a bank;
- (6) an instructor employed by or under contract with the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .1345 of this Section;
- (7) any court of competent jurisdiction has found the course sponsor or any official or instructor employed by or under contract with the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities;

(b) If a licensee who is an approved course sponsor or an instructor employed by or under contract with an approved course sponsor engages in any dishonest, fraudulent, or conduct inconsistent with the Rules in this Section in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 143-151.56.

*History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 1, 2002.*

proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set shall be deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set; and
- (6) Other finfish pound net set.

(d) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. The applicant shall be notified of such denial in writing. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director:

- (1) The application must be in the name of an individual and shall not be granted to a corporation, partnership, organization or other entity;
- (2) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J.0101 and 03J .0102;
- (3) The proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (4) The proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area;
- (5) The applicant has in the past complied with fisheries rules and laws and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in 10 years shall be grounds for denial of a pound net set permit;
- (6) The proposed pound net set is in the public interest; and
- (7) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**15A NCAC 03J .0107 POUND NET SETS**

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.

(b) It is unlawful to use pound net sets in coastal fishing waters without the permittee's identification being clearly printed on a sign no less than six inches square, securely attached to the outermost stake of each end of each set. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include the pound net set permit number and the permittee's last name and initials.

(c) It is unlawful to use pound net sets, or any part thereof, except for one location identification stake or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the

Approval shall be conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Subparagraphs (1) through (8) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h) It is unlawful to transfer a pound net set permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a pound net set permit in the new permittee's name. The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under G.S. 28A. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the

Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

(i) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j) In Core Sound, it is unlawful to use pound net sets in the following areas except that only those pound net set permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule:

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point to Green Flasher #13; to Green Flasher #11; to a point on shore north of Great Ditch 34° 58.9000' N - 76° 15.1000' W; thence following the shoreline to Hog Island Point 34° 58.5083' N - 76° 15.7882' W; thence back to Green Day Marker #3;
- (2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point to Cedar Island Point 34° 57.5001' N - 76° 16.5664' W; to Red Flasher #18; to Red Flasher #2; back to Green Marker #3; and
- (3) That area bounded by a line beginning on Long Point 34° 56.4809' N - 76° 16.7344' W; to Red Marker #18; to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53.7500' N - 76° 18.1833' W; to Green Marker #25; to Green Marker #27; to Red Flasher #28; to Green Flasher #29; to Green Flasher #31; to Green Flasher #35; to Green Flasher #37; to Bells Point 34° 56.9673' N - 76° 29.9990' W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

(k) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:

- (A) Specify size, number, and location;
  - (B) Specify mesh length, but not more than six inches;
  - (C) Specify time or season; and
  - (D) Specify areas.
- (2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57.3950' N-76° 00.8166' W; to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56.7316' N-75° 59.3000' W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09.3033' N-75° 53.4916' W; to a point on Camden Point at 36° 09.9093' N - 75° 54.6601' W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.
- (l) Pound net sets are subject to inspection at all times.
- (m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.
- (n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.
- (o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 150B-23; Eff. January 1, 1991; Amended Eff. April 1, 1999; March 1, 1996; March 1, 1994; September 1, 1991; January 1, 1991; Temporary Amendment Eff. September 1, 2000; August 1, 2000; Amended Eff. August 1, 2002; April 1, 2001.*

**15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

- (a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:
- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application must be notarized;
  - (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;

- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
  - (4) Certification that the applicant and their designees do not have four or more marine or estuarine resource convictions during the previous three years;
  - (5) For permit applications from business entities, the following documentation is required:
    - (A) Business Name;
    - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
    - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
    - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
    - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
    - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
  - (6) Additional information may also be required by the Division for specific permits.
- (b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) Pound Net Permit;
  - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.
- (c) A permittee and their designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
  - (2) Permit to Transplant Oysters from Seed Management Areas;
  - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
  - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas.
- (d) A permittee must hold a valid Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category.
- (e) Aquaculture Operations/Collection Permits:
- (1) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
  - (2) The permittee or designees must hold appropriate licenses from the Division of Marine Fisheries for the species harvested and

the gear used under the Aquaculture Collection Permit.

*Eff. April 1, 2001;  
Amended Eff. August 1, 2002.*

(f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(g) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103-.0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, and 03O .0502-.0503 as applicable to the requested permit.

(h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director; and
- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

(i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

(j) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

(l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 03.

(m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

(n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(o) Permit applications shall be available at all Division Offices.

(p) Any permit which is valid at time of adoption of this Rule shall be valid until the expiration date stated on the permit.

*History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52;  
Temporary Adoption Eff. September 1, 2000; May 1, 2000;*

**15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION**

(a) For CAMA minor permits authorizing beach bulldozing, the applicant is entitled to request a one-time 30 day permit extension. No additional extensions shall be granted after the 30 day extension has expired. Notwithstanding this Paragraph, the applicant is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the 30 days permit extension.

(b) Where no development has been initiated during the development period, the permitting authority shall extend the authorized development period for no more than two years upon receipt of a signed and dated request from the applicant containing the following:

- (1) a statement of the intention of the applicant to complete the work within a reasonable time;
- (2) a statement of the reasons why the project will not be completed before the expiration of the current permit;
- (3) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or, previously approved permit modifications;
- (4) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
- (5) a statement that the project is in compliance with all conditions of the current permit.

Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project, the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be granted for periods not to exceed 10 years.

(c) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate the request to the commenting state agencies along with a copy of the original permit application. Commenting agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the commenting period the Department will notify the applicant promptly of its actions on the extension request.

(d) Notwithstanding Paragraphs (b) and (c) of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied to the maximum extent practical by the permitting authority in making a decision on an extension request.

- (e) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).
- (f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.

*History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8); Eff. March 15, 1978; Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985; November 1, 1984.*

**15A NCAC 18A .3301 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Adequate" means determined by the Department to be of sufficient size, volume, or technical specifications, to effectively accommodate and support the planned, current, or projected workloads for a specified operational area.
- (2) "Adult Day Service Facility" means an establishment which provides an organized program of services including a meal, for adults during the day in a community group setting and for which a license or certificate for payment is required from the Department of Health and Human Services. It includes adult day care services, adult day health services, psychosocial rehabilitation programs and other day programs which do not provide overnight accommodations.
- (3) "Approved" means procedures and domestic or commercial equipment determined by the Department to be in compliance with this Section. Commercial Kitchen equipment shall be approved in accordance with "ANSI/NSF Standard 2 Food Equipment", "NSF Standard 3 Commercial Spray-Type Dishwashing Machines", or "ANSI/NSF Standard 7 Commercial Refrigerators and Storage Freezers" which are incorporated by reference including any subsequent amendments or additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, NC. Copies may be obtained from NSF International, 3475 Plymouth Road, PO Box 130140, Ann Arbor, Michigan 48113-0140 or on the World Wide Web at [www.nsf.org](http://www.nsf.org) at a cost of sixty dollars (\$60.00) for ANSI/NSF Standard 2 and ninety-five dollars (\$95.00) for NSF Standard 3 or ANSI/NSF Standard 7.
- (4) "Communicable Condition" means the state of being infected with a communicable agent but without symptoms.
- (5) "Communicable Disease" means any disease that can be transmitted from one person to another directly, by contact with excrement, other body fluids, or discharges from the body;

- (6) "Department" or "DENR" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.
- (7) "Eating and Cooking Utensils" means and includes any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
- (8) "Environmental Health Specialist" means a person authorized to represent the Department.
- (9) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Frying" means to cook over direct heat in hot oil or fat.
- (11) "Hermetically Sealed" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.
- (12) "Hygroscopic Food" means food which readily takes up and retains moisture, such as bean sprouts.
- (13) "Impervious" means that which will not allow entrance or passage, such as an airtight plastic container that will not allow the entrance of moisture or vermin.
- (14) "Multi-Service Articles" means tableware, including flatware and holloware which are designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used.
- (15) "Multi-Use Articles" means bulk food containers and utensils designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used. The term includes items such as food storage containers, beverage pitchers, serving spoons and bowls, tongs, and spatulas. The term does not include multi-service articles as defined in this Section.
- (16) "Potable Water" means water from an approved source which is suitable for drinking.
- (17) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated food of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less.

- (18) "Putrescible Materials" means materials likely to rot or putrefy, such as fruit, vegetables, meats, dairy products, or similar items.
- (19) "Sanitary Sewage System" means a complete system of sewage collection, treatment, and disposal and includes septic tank systems, connection to a public or community sewage system, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.
- (20) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .3312.
- (21) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (22) "Single-Service Articles" means tableware, including flatware and hollowware, carry-out utensils and other items such as bags, containers, stirrers, straws, toothpicks, and wrappers which are designed, fabricated and intended by the manufacturer for one-time use.
- (23) "Single-Use Articles" means bulk food containers and utensils intended by manufacturer to be used once and discarded. The term includes items such as formed buckets, bread wrappers, pickle barrels, and No. 10 cans. The term does not include single-service articles as defined in this Section.

shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the State or foreign shellfish control agency. After each container of shellstock has been emptied, the management shall remove the stub of the tag and retain it for a period of at least 90 days.

(d) Raw eggs or products containing raw eggs shall not be consumed, including raw cookie dough, cake batter, brownie mix, milkshakes, ice cream and other food products. A pasteurized egg product may be used as a substitute for raw eggs.

(e) Beverages and food sent from home shall be fully prepared, dated, and identified for the appropriate participant at the participant's home. All formula and other bottled beverages shall be returned to the participant's home or discarded at the end of each day. Drinking utensils provided by the adult day service facility shall be sanitized in accordance with this Section. Formula and other beverages which require refrigeration, and pureed food after opening shall be refrigerated at 45°F (7°C) or below. Commercially prepared pureed foods shall be served from a single-serving dish rather than the food container. Upon opening, containers of pureed food shall be covered, dated with the date of opening, and refrigerated.

(f) Adult day service facilities receiving prepared, ready-to-eat meals from outside sources shall use only catered meals obtained from a food handling establishment permitted or inspected by a health department. During transportation, food shall meet the requirements of these Rules relating to food protection and storage.

(g) All bag lunches containing potentially hazardous foods shall be refrigerated in accordance with this Section.

*History Note: Authority G.S. 130A-235; Eff. August 1, 2002.*

*History Note: Authority G.S. 130A-285; Eff. August 1, 2002.*

**15A NCAC 18A .3304 FOOD SUPPLIES**

(a) Food shall be in good condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Potentially hazardous foods shall only be obtained from sources that are permitted or inspected by a health department or the North Carolina Department of Agriculture. The use of food packaged in hermetically sealed containers that was not prepared in a commercial food processing establishment is prohibited.

(b) Milk products that are used shall be Grade "A" pasteurized fluid milk and fluid milk products or evaporated milk. The term "milk products" means those products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630. Unless prescribed by a physician, dry milk and dry milk products may be used only for cooking purposes, including cooked pudding desserts and flavored hot beverages.

(c) Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker - packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked

**15A NCAC 18A .3308 FOOD SERVICE**

(a) Milk and milk products for drinking purposes shall be served from a commercially filled container of not more than one gallon capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser directly into the drinking utensil.

(b) Ice shall be made, handled, transported, stored and dispensed in such a manner as to be protected against contamination. Ice shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored to protect them from dust, drip, splash and other contamination. Ice storage bins shall be drained through an air gap.

(c) Employees preparing or serving food shall wash their hands in accordance with 15A NCAC 18A .3328 and shall either use antibacterial soap, dips, or hand sanitizers immediately prior to food preparation or service or use clean, disposable gloves during food preparation or service. This requirement is in addition to all handwashing requirements in Rule .3328 of this Section.

- (d) Once served, portions of leftover food shall not be served again unless the package is intact and the food is not potentially hazardous.
- (e) Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the food or stored clean and dry.
- (f) Nothing in the rules of this Section shall be construed as prohibiting family style food service at adult day service facilities so long as supervision of the participants is maintained throughout each meal except that family style food service may be prohibited during the outbreak and investigation of communicable diseases.

*History Note: Authority G.S. 130A-285; Eff. August 1, 2002.*

**15A NCAC 18A .3311 CLEANING AND SANITIZING OF EQUIPMENT AND UTENSILS**

- (a) Multi-use tableware shall be washed, rinsed, and sanitized after each use.
- (b) Food-contact surfaces of equipment and utensils shall be washed, rinsed, and sanitized:
  - (1) Each time there is a change from raw to ready-to-eat foods;
  - (2) Each time there is a change in processing between types of raw animal products such as beef, fish, lamb, pork, and poultry;
  - (3) After any contamination may have occurred;
  - (4) Whenever necessitated by food temperature, room temperature, type of food, and food particle accumulation; and
  - (5) After final use each working day.
- (c) Nonfood-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

*History Note: Authority G.S. 130A-235; Eff. August 1, 2002.*

**15A NCAC 18A .3312 MANUAL CLEANING AND SANITIZING**

- (a) Adult day service facilities licensed for or serving food to 30 or more participants shall provide and use a three-compartment sink with drainboards or counter top space of adequate size on each end if multi-service eating and drinking utensils are manually cleaned and sanitized.
- (b) Adult day service facilities licensed for or serving food to fewer than 30 participants that use a domestic dishwasher and two-compartment sink for sanitizing multi-service articles shall sanitize as required in Subparagraph (e)(4) of this Rule. Sink compartments shall be large enough to submerge the largest items to be washed and each compartment shall be supplied with hot and cold running water.
- (c) If required under Rule .3310 of this Section, drainboards or counter top space of adequate size shall be provided for handling of soiled utensils prior to washing and cleaned utensils following sanitizing. Drainboards or counter top space shall be no less than 24" long. For adult day service facilities licensed for or serving food to fewer than 13 participants and located in a residence, a domestic dishwasher may be used to provide the equivalent of 24" of drainboard space, and other designated

areas not contiguous with the sink may be used to meet drainboard or counter top space requirements.

- (d) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.
- (e) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:
  - (1) Sinks shall be cleaned and sanitized prior to use;
  - (2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is changed when visibly soiled;
  - (3) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and
  - (4) The food-contact surfaces of equipment and utensils shall be sanitized in the third compartment by:
    - (A) Immersion for at least one minute in clean, hot water at a temperature of at least 170°F (77°C);
    - (B) Immersion for at least two minutes in a clean solution containing at least 50 parts per million (ppm) of available chlorine at a temperature of at least 75°F (24°C);
    - (C) Immersion for at least two minutes in a clean solution containing at least 12.5 ppm of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or
    - (D) Immersion for at least two minutes in a clean solution containing at least 200 ppm of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.
- (f) For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer shall be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils. Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.
- (g) When hot water is used for sanitizing, the following facilities shall be provided and used:
  - (1) An approved heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and
  - (2) A numerically scaled indicating thermometer, accurate to ±3° F (± 1.5°C), convenient to the sink for frequent checks of water temperature; and

- (3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
- (h) An approved testing method or equipment, used in accordance with the product manufacturer's instructions, shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.
- (i) After sanitization, all equipment and utensils shall be air-dried.

*History Note: Authority G.S. 130A-235; Eff. August 1, 2002.*

**15A NCAC 18A .3314 FOOD SERVICE EQUIPMENT AND UTENSIL STORAGE**

- (a) Cleaned and sanitized equipment and utensils shall be handled in a way that protects the food-contact surfaces from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates, and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.
- (b) Cleaned and sanitized utensils and equipment shall be stored above the floor in a clean, dry location in a way that protects them from dust, insects, drip, splash and other contamination and facilitates floor cleaning. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.
- (c) Single-service articles shall be purchased only in clean containers, shall be stored in a clean, dry container until used, and shall be handled in accordance with the rules of this Section.

*History Note: Authority G.S. 130A-235; Eff. August 1, 2002.*

**15A NCAC 18A .3315 WATER SUPPLY**

- (a) Running water under pressure shall be provided in sufficient quantities to meet the needs of cooking, cleaning, drinking, toilets, and outside uses without producing water pressure lower than that required by the North Carolina Plumbing Code.
- (b) The water supply shall meet the requirements of 15A NCAC 18C or 15A NCAC 18A .1700 Protection of Water Supplies. Samples of water shall be collected by the Environmental Health Specialist and submitted to a state certified laboratory for bacteriological analysis annually. Other tests of water quality, as indicated by possible sources of contamination, may be collected by the Environmental Health Specialist.
- (c) No cross-connections with an unapproved water supply shall exist. If potential back-flow conditions exist, an approved back-flow prevention device shall be provided.
- (d) Water heating equipment that is sufficient to meet the maximum expected requirements of the adult day service facility shall be provided. Capacity and recovery rates of hot water heating equipment shall be based on number and size of sinks, capacity of dishwashing machines, capacity of laundering machines, clothing changing facilities, and other food service and cleaning needs. Hot and cold water under pressure shall be easily accessible to all rooms where food is processed or handled, rooms in which utensils or equipment are washed, and

other areas where water is required for cleaning and sanitizing, including lavatories and diaper changing areas.

- (e) Hot water heating equipment shall provide hot water as follows:
  - (1) at a minimum temperature of 140°F at the point of use when hot water is used for sanitizing; and
  - (2) at a temperature of no less than 90°F and no more than 120°F at hand sinks and in other areas accessible to participants, and in kitchens not used to prepare meals.

*History Note: Authority G.S. 130A-235; Eff. August 1, 2002.*

**15A NCAC 18A .3317 TOILETS**

- (a) All toilet fixtures and toilet rooms shall be located to comply with the requirements of this Section. Storage in toilet rooms shall be limited to toileting and clothing changing supplies except that cleaning supplies can be stored in toilet rooms in a locked cabinet. All toilet fixtures shall be easily cleanable, and in good repair.
- (b) Toilet fixtures shall be cleaned and sanitized when soiled and at least on a daily basis. A solution of 100 ppm chlorine solution or other equivalent methods approved by the Department shall be used for sanitizing.
- (c) If bedside commodes, bedpans or urinals are used, they shall be located in a room equipped with a spray rinse toilet or utility sink. Bedside commodes, bedpans and urinals shall be emptied and rinsed or discarded when used, and cleaned and sanitized before use by any other participant, with 100 ppm chlorine solution or equivalent method approved by the Department.

*History Note: Authority G.S. 130A-235; Eff. August 1, 2002.*

**15A NCAC 18A .3318 LAVATORIES AND BATHING FACILITIES**

- (a) Lavatories shall be sized and located to comply with the appropriate handwashing requirements of this Section, easily cleanable, in good repair, and kept free of storage.
- (b) All lavatories and bathing facilities shall be equipped with hot and cold running water through mixing faucets except that automatic mixing faucets or pre-mixing devices which provide water at the temperature specified in Rule .3315(e) of this Section may be provided.
- (c) Lavatories shall be cleaned and sanitized as needed and at least on a daily basis. A solution of 100 ppm chlorine or other approved methods shall be used for sanitizing.
- (d) Soap and disposable towels or heated air hand drying device shall be provided at every handwash lavatory area.
- (e) Handwash signs shall be posted at each employee handwashing lavatory.
- (f) If bathing facilities or hydrotherapy equipment are provided, they shall be kept clean. Bathing equipment which has contact with participant's skin shall be cleaned with a detergent and an EPA listed Germicidal disinfectant between participant uses. Manufacturer's instructions shall be followed for cleaning equipment with pumps. A supply of cleaning and disinfectant agents shall be accessible to bathing areas. Chemical test kits

shall be used to test the concentration of disinfectants mixed on site.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3320 STORAGE**

- (a) Rooms or spaces shall be provided for the storage of equipment, furniture, clothes, beds, cots, mats, and supplies and shall be kept clean. Shelving or other storage, constructed in a manner to facilitate cleaning, shall be provided for orderly storage of supplies and equipment.
- (b) All corrosive agents, insecticides, rodenticides, herbicides, bleaches, detergents, polishes, items containing petroleum products, any product which is under pressure in an aerosol dispensing can, and any substance which may be hazardous if ingested, inhaled, or handled shall be stored in a locked storage room or cabinet, locked with a combination lock or key except at psychosocial rehabilitation programs where participants need access to the chemicals. Keys shall be kept out of the reach of participants and shall not be stored in the lock.
- (c) A properly mixed sanitizing solution and a mild detergent solution approved by the Department shall not be required to be stored in a locked storage room or locked cabinet. These solutions shall be clearly labeled.
- (d) Medications not under the control of a participant shall be stored in a separate locked cabinet or other locked container. Medications which require refrigeration shall be stored in a locked box or locked container in a refrigerator.
- (e) Closets, lockers, or coat hooks shall be provided for storage of coats, hats, or similar items. Personal items such as toothbrushes, dentures or combs shall be stored in containers labeled with the participant's name.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3321 BEDS AND LINENS**

- (a) All beds, chairs, cots, and mats shall be clean, in good repair and stored to protect them from splash, drip and other contamination.
- (b) Individual beds used for sleeping shall be covered with waterproof, washable material and shall be equipped with individual linen.
- (c) All bed linen shall be kept clean and in good repair and shall be changed between participant uses.
- (d) Blankets, throws or other covers shall be kept clean.
- (e) Linen shall be stored with the individual mat or cot until laundered or stored individually for each participant in a designated area if taken off the mats or cots. Linen shall be laundered a minimum of one time per week, or more often if soiled. Linen used for more than one participant shall be laundered between users. Linen used in clothing changing areas shall be changed and laundered when soiled or at least on a daily basis. Linens shall be large enough to cover the sleeping surface.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3325 WALLS AND CEILINGS**

(a) The walls and ceilings, including doors and windows, of all rooms and areas shall be kept clean, in good repair, and free of microbial growth. All walls shall be non-absorbent and easily cleanable.

(b) Ceilings in rooms in which food is stored, handled or prepared, utensil-washing rooms, and toilet rooms shall be non-absorbent and easily cleanable. Acoustic ceiling material may be used where ventilation precludes the possibility of grease and moisture absorption.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3329 WASTEWATER**

All wastewater shall be disposed of in a publicly-owned wastewater treatment system or by an approved properly operating on-site wastewater system.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3332 OUTDOOR AREAS**

(a) The premises, including the outdoor area, shall be kept clean, drained and free of litter and hazardous materials. Grass and other vegetation shall be maintained in a manner which does not encourage the harborage of vermin.

(b) All debris, glass, dilapidated structures, and broken equipment shall be removed. The outdoor areas shall be free from unprotected wells, grease traps, cisterns, and utility equipment.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3333 SWIMMING AND WADING POOLS**

(a) Swimming pools, wading pools and spas shall be designed, constructed, operated and maintained in accordance with the Rules Governing Swimming Pools, 15A NCAC 18A .2500. Copies of these Rules may be obtained from DENR, Division of Environmental Health, Environmental Health Services Section, 1630 Mail Service Center, Raleigh, NC 27699-1630.

(b) Unfiltered and nondisinfected containments of water shall not be utilized for water recreation activities.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

**15A NCAC 18A .3335 APPEALS PROCEDURE**

Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.

*History Note: Authority G.S. 130A-235;  
Eff. August 1, 2002.*

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**TITLE 17 - DEPARTMENT OF REVENUE**

**17 NCAC 07B .1303 DELIVERIES TO DONEES**

A donee is a person to whom the buyer of tangible personal property gives the property without charge. When a North Carolina retailer sells tangible personal property to a buyer and the retailer, at the direction of the buyer, delivers the property to the buyer's donee instead of to the buyer, the sale by the retailer is subject to applicable State and local sales tax only if the delivery to the donee is made inside the State. If the delivery to the donee is made outside the State, no State or local sales or use tax applies. A retailer who, at the direction of a buyer, delivers property to the buyer's donee at a point outside the State must have acceptable proof of delivery in accordance with 17 NCAC 07B .1301.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 2002; July 1, 1999; October 1, 1993; October 1, 1991; March 1, 1984; January 3, 1984.*

**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

**19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS**

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. Exception: A mobile/modular unit with maximum measurements of 13'6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load except as provided in this Rule. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12" of roof overhang or the total width of overhang on the appropriate side of the home. An extender shall be placed on the front and rear of the mobile home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting, a minimum of 4", which is required to be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6' to 8' above the road surface with a 5" amber flashing beacon mounted on the top of each extender. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit shall not be issued vehicle specific to exceed a width in excess of 15 feet for all movements unless

authorized by the Central Permit Office or the State Maintenance and Equipment Engineer after analysis of the proposed load and evaluation of the proposed route of travel. Exception: A mobile/modular unit with maximum measurements of 13' 6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

(c) An annual permit shall be issued vehicle specific not to exceed a maximum width of 12' and a maximum height of 13' 6" for movement on all highways in North Carolina. Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14' unit with an allowable roof overhang not to exceed a total of 12". These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

(1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.

3 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration

5 axle single vehicle may have a maximum gross weight up to 94,5000 lbs. based on an analysis of weight distribution and axle configuration

5 axle vehicle combination may have a maximum gross weight up to 112,000 lbs. based on the extreme axle measurement

6 axle single vehicle may have a maximum gross weight up to 108,000 lbs. based on an analysis of weight distribution and axle configuration

6 axle vehicle combination may have a maximum gross weight up to 120,000 lbs. based on the extreme axle measurement

7 axle single vehicle may have a maximum gross weight up to 122,000 lbs. based on an analysis of weight distribution and axle configuration

7 axle vehicle combination may have a maximum gross weight up to 132,000 lbs. based on the extreme axle measurement

7 axle vehicle combination with a gross weight exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle 37,000 lbs.  
Tandem axle 50,000 lbs.

2 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration

3 axle single vehicle may have a maximum gross weight up to 80,000 lbs. based on an analysis of weight distribution and axle configuration

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration

- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:

(A) Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;

(B) Is licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified in G.S. 20-118;

(C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;

(D) Is a vehicle combination with at least five axles; and

(E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.

(e) Overlength permits shall be limited as follows:

(1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.

(2) Annual (blanket) permits shall not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.

(3) Front overhang may not exceed the length of 3' specified in G.S. 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.

(f) An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16' wide mobile/modular unit with a maximum 3" gutter edge shall not exceed a height of 13' 6" while traveling on North Carolina highways. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

(g) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Exception: A 16' wide mobile/modular home unit with a maximum 3" gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of 10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2" by 12" to be displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24" from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a temporarily mounted brake light and a flashing amber light, 8" in diameter with a minimum candlepower of 800 watts. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles

apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

(h) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.

(i) Additional safety measures are as follows:

- (1) A yellow banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ---ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers.
- (2) Red flags measuring 18" square shall be displayed on all sides at the widest point of load for all loads in excess of 8' 6" wide but the flags shall be so mounted as to not increase the overall width of the load.
- (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations.
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load.
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

(j) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(k) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10' shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(l) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced

immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(m) The Department of Transportation may require escort vehicles accompany oversize or overweight loads. The weight, length of load, width of pavement, height, length of combination, width of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.

*History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990; Filed as a Temporary Rule Eff. October 1, 2000; Amended Eff. August 1, 2002.*

**TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES**

**23 NCAC 02D .0203 FEES FOR EXTENSION PROGRAMS**

(a) Registration fees for Non-Curriculum Extension Instruction. For purposes of administration of this Rule, non-curriculum extension instruction means all instruction organized, supervised, or delivered outside the regular curriculum programs offered by the college.

- (1) A registration fee, as established by the State Board, as set by the Legislature shall be charged for each occupational extension class.
- (2) Each local board shall establish registration fees for Community Service Programs.
- (3) All recreational courses shall be self-supporting. Colleges shall collect and deposit to a local account fees and other contributions to support entirely the costs of all recreational extension courses taught. Also note Paragraph (e) of Rule .0325 of this Subchapter regarding the reporting of student membership hours for this area.
- (4) A registration fee shall be charged for each extension class of 21 weeks or less. A registration fee shall be charged each 16 weeks for extension classes lasting longer than 21 weeks.
- (5) Registration Fee Waivers:
  - (A) Special Extension Training Programs. No registration fees shall be charged students enrolling for special extension training programs that directly relate to job performance set forth in G.S. 115D-5(b).

- (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one extension or curriculum course per semester in the system without registration fee or tuition charges.
- (C) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged registration fees.
- (D) Prison inmates shall not be charged registration fees.
- (E) Elementary and secondary school teachers who take CPR or first aid classes shall not be charged registration fees.
- (F) Members of the North Carolina Civil Air Patrol and individuals engaged in civil preparedness who take special extension training courses that directly relate to their job performance shall not be charged registration fees.

(b) **Self-Supported Classes.** A college may sponsor self-supporting classes, [see 23 NCAC 02E .0101], deposit income (if any) to a local account, and pay all expenses from the local account. Each student shall pay a pro-rata share of the cost of a self-supporting class. Since the cost for a self-supporting class is not considered a registration fee, the pro-rata cost for any individual or group is not waived under G.S. 115D-5(b) or G.S. 115B-2.

- (1) To promote uniformity in determining cost of the self-supporting classes, direct and indirect costs for these classes are defined as follows:

- (A) **Direct Costs**
  - (i) Instructor(s) salary including FICA, travel, and course development costs;
  - (ii) Instructional supplies and materials;
  - (iii) Rental of buildings;
  - (iv) Advertising, printing, postage, and mailing;
  - (v) Equipment;
  - (vi) Refreshments; and
  - (vii) Administrative or clerical costs.

- (B) **Indirect Costs.** Indirect costs are the charges for activities and services that support self-supporting classes which cannot be directly and exclusively assigned to a self-supporting class. Examples of indirect costs shall include utilities, custodial and security services, coordination, administration, or clerical, salary and fringe benefits.

- (2) If self-supporting receipts (all categories: e.g., curriculum, community service) exceed expenditures for the fiscal year the following provisions apply:

- (A) Surplus funds shall be expended for student financial aid, scholarships, or program improvement. All expenditures shall directly benefit students.

- (B) Funds derived from self-supporting classes shall not be used for:

- (i) Supplemental salaries of any personnel;
- (ii) Administrative support of the college, other than noted above, and only for activities that directly benefit students; and
- (iii) College entertainment expense. (Educational activities for non-college personnel or college personnel to enhance student success would not be entertainment. Functions in which the primary purpose is fundraising would be entertainment.)

- (3) Each local board of trustees shall adopt a policy regulating the amount of mark-up the college may charge for a self-supporting class and how surplus funds derived from these classes may be used. Each local board of trustees shall review its policy on self-supporting classes at least once every three years. All expenditures must be consistent with the mission and purpose of the community college system.

(c) **Driver Education.** Colleges shall collect a student fee as established by the local board of trustees for the adult driver education training course offered through the community service program.

(d) **Registration Fee Refunds.** A refund shall not be made except under the following circumstances:

- (1) A student who officially withdraws from an extension class(es) prior to the first class meeting shall be eligible for a 100 percent refund. Also, a student is eligible for a 100 percent refund if an applicable class fails to "make" due to insufficient enrollment.
- (2) After the respective class begins, a 75 percent refund shall be made upon the request of the student if the student officially withdraws from the class prior to or on the 10 percent point of the scheduled hours of the class. Note: This Rule is applicable regardless of the number of times the class meets or the number of hours the class is scheduled to meet.
- (3) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a

- (4) contact hour class on or before the tenth calendar day of the class.
- (4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.
- (5) If a student, having paid the required registration fee for a semester or term, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all registration fees for that semester or term may be refunded to the estate of the deceased.

(e) Military Registration Fee Refund - Upon request of the student, each college shall:

- (1) Grant a full refund of registration fees to military reserve and national Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible.

Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

*History Note: Filed as a Temporary Amendment Eff. November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 115D-5; 115D-39; S.L. 1995, c. 625; Eff. February 1, 1976; Amended Eff. June 1, 1994; September 1, 1993; August 1, 1983; August 17, 1981; Temporary Amendment Eff. June 1, 1997; Amended Eff. August 1, 2002; July 1, 1998.*

- (3) Restricted-Access Materials - Agency supervisors must grant permission for teleworkers to work on restricted-access information or materials at alternate work locations. Teleworkers shall agree to follow agency-approved security procedures in order to ensure confidentiality and security of data.
- (4) Work Hours - The total number of hours that employees are expected to work will not change, whether they are worked at the central or at the alternate work location. This does not, however, restrict the use of alternative work schedules. Agencies must ensure that procedures are in place to track the work hours of employees who telework and to document the hours worked by employees covered by the Fair Labor Standards Act. Employees shall apply themselves to their work during designated work hours. A teleworker during the designated work hours shall not be the primary care taker for a dependent child or adult.
- (5) Equipment and Software - An agency shall set forth in their policies and procedures conditions by which the State will pay for telephone and services furnished to teleworkers.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. July 1, 2002.*

**25 NCAC 01C .0813 TERMINATION OF TELEWORKING ARRANGMENT**

The agency may terminate the teleworking agreement at its discretion. Termination of a teleworking arrangement by management is not grievable to the State Personnel Commission under personnel policies. All other grievable rights shall be set forth in the agency policy.

*History Note: Authority G.S. 126-4; S.L. 1999-328; Temporary Adoption Eff. January 19, 2000; Eff. July 1, 2002.*

**TITLE 25 - OFFICE OF STATE PERSONNEL**

**25 NCAC 01C .0811 DESIGNATION OF TERMS OF TELEWORKING ARRANGEMENTS**

All teleworking arrangements shall memorialize in writing the mutual teleworking responsibilities of the participants in the arrangement. Each participant in a teleworking arrangement must sign the document that contains the terms of the teleworking arrangement. At a minimum, the document shall define the parameters of the teleworking arrangement and shall comply with the policy provision below.

- (1) Compensation and Benefits - An employee's compensation and benefits will not change when he/she teleworks.
- (2) Safety and Liability. An agency shall establish procedures that provide reasonable assurance that materials, equipment and furniture supplied the employee at the alternate work location comply with safety standards.

**25 NCAC 01I .2310 APPEALS**

(a) An employee with permanent status who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency or county grievance procedure, whichever is applicable. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to agency management, within 30 calendar days of the alleged harassing action, and the agency must be given 60 calendar days in which to take remedial action, if any, unless the agency has waived the 60-day period, and the employee has acknowledged such waiver. An appeal to the State Personnel Commission of unlawful workplace harassment must be filed with the Office of

Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of written notification of the remedial action, if any, taken by the agency.

(b) Grievances which allege discrimination not including unlawful workplace harassment may at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36, and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after written notification of remedial action, if any, taken by the agency must be dismissed.

*History Note:* Authority G.S. 126-35; 126-36; 126-38; 150B-23; 150B-36; Eff. December 1, 1995; Amended Eff. July 1, 2002.

**TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS**

**26 NCAC 01 .0103 COST FOR COPIES**

(a) Copies of any public documents filed in the Office of Administrative Hearings are available in the following forms:

- (1) looseleaf form at a cost of twenty-five cents (\$0.25) per page with a minimum cost of two dollars and fifty cents (\$2.50);
- (2) 3 1/2 inch diskette at a cost of five dollars (\$5.00) per diskette if the document is available in electronic form;
- (3) email at no cost if the document is available in an electronic form.

(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to the looseleaf copying cost. Diskette certification is not available.

(c) Transcripts or tapes are available of contested case hearings. Procedures for requesting and costs of transcripts or tapes are in 26 NCAC 03 .0123.

(d) North Carolina sales tax shall be added if applicable.

*History Note:* Authority G.S. 150B-21.25; 150B-37; Eff. August 1, 1986; Amended Eff. April 1, 1990; January 1, 1989; Recodified from 26 NCAC 1 .0001 Eff. January 1, 1991; Amended Eff. May 1, 2001; August 1, 2000; February 1, 1994; August 2, 1993.

## RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Wednesday, June 21, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Tuesday, June 15, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

### RULES REVIEW COMMISSION MEMBERS

#### Appointed by Senate

Paul Powell - Chairman  
Robert Saunders  
Laura Devan  
Jim Funderburke  
David Twiddy

#### Appointed by House

John Arrowood - 1<sup>st</sup> Vice Chairman  
Jennie J. Hayman 2<sup>nd</sup> Vice Chairman  
Walter Futch  
Jeffrey P. Gray  
George Robinson

### RULES REVIEW COMMISSION MEETING DATES

June 21, 2001	July 19, 2001
August 16, 2001	September 20, 2001

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### Log of Filings (Log #176) April 23, 2001 through May 21, 2001

#### DHHS

Respite Care	10	NCAC 42B .2407	Adopt
Respite Care	10	NCAC 42C .2406	Adopt
Respite Care	10	NCAC 42D .1832	Adopt

#### DHHS / COMMISSION FOR MH/DD/SAS

Supplying of Methadone in Treatment Programs by RN	10	NCAC 45G .0306	Amend
Schedule II Drugs	10	NCAC 45H .0203	Amend
Schedule III Drugs	10	NCAC 45H .0204	Amend

#### TRANSPORTATION, DEPARTMENT OF / DIVISION OF HIGHWAYS

Permits-Weight, Dimensions, and Limitations	19	NCAC 02D .0607	Amend
Participation in the Program	19	NCAC 02D .1003	Amend

#### STATE BOARDS / NC BOARD OF DIETETICS/NUTRITION

Definitions	21	NCAC 17 .0101	Adopt
Requirement of License	21	NCAC 17 .0102	Adopt
Requirement of License	21	NCAC 17 .0103	Adopt
Applications	21	NCAC 17 .0104	Adopt
Examination for Licensure	21	NCAC 17 .0105	Adopt
Provisional License	21	NCAC 17 .0107	Adopt
Disapproved Application	21	NCAC 17 .0108	Adopt
Issuance and Renewal of License	21	NCAC 17 .0109	Adopt
Licensure Certificate	21	NCAC 17 .0110	Adopt
Inactive Status	21	NCAC 17 .0111	Adopt
Fees	21	NCAC 17 .0113	Adopt
Code of Ethics for Practice and Conduct	21	NCAC 17 .0114	Adopt
Exemptions	21	NCAC 17 .0115	Adopt
Violations, Complaints, Subsequent Board Action	21	NCAC 17 .0116	Adopt
Definitions	21	NCAC 17 .0301	Adopt
Definitions	21	NCAC 17 .0302	Adopt
Supervision	21	NCAC 17 .0303	Adopt
Records and Reports	21	NCAC 17 .0304	Adopt
Individuals Aiding Practice of Dietetics/Nutrition	21	NCAC 17 .0401	Adopt
Individuals Providing Nutrition Information	21	NCAC 17 .0402	Adopt

#### STATE BOARDS / N C BOARD OF NURSING

Listing and Renewal	21	NCAC 36 .0404	Amend
Approval of Nurse Aide Education Programs	21	NCAC 36 .0405	Amend

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**RULES REVIEW COMMISSION**

**RULES REVIEW COMMISSION**

**May 17, 2001**

**MINUTES**

The Rules Review Commission met on Thursday morning, May 17, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, Laura Devan, John Arrowood, George Robinson, Jim Funderburk, and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Juanita Gaskill	Marine Fisheries Division
Mike Marshall	Marine Fisheries Division
Harry Wilson	State Board of Education
Matt Brody	CCNC
Jim Panton	DHHS/Division of Medical Assistance
Nat Wilson	NC Division Water Resources
Emily Lee	Department of Transportation
Beth Leonard McKey	Department of Justice
Fred Allen	NC Aggregates Association
Dedra Alston	DENR
Fred Harris	Wildlife Resources Commission
Joan Troy	Wildlife Resources Commission
Portia Rochelle	DHHS/Division Medical Assistance
Steve Varnedoe	Department of Transportation

**APPROVAL OF MINUTES**

The meeting was called to order at 10:00 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the April 19, 2001, meeting. The minutes were approved as written.

Mr. DeLuca asked the commissioners to look at the two different types of charts containing information on the types and number of rules. He asked them to let the staff know what type they preferred. He also reminded them to sign up for electronic deposit for their reimbursements.

**FOLLOW-UP MATTERS**

2 NCAC 34 .0502: Department of Agriculture Structural Pest Control Committee – The agency anticipates submitting a rewritten rule at the June meeting. No action was taken.

10 NCAC 26H .0506: DHHS-Division of Medical Assistance – The rewritten rule submitted by the agency was approved by the Commission.

10 NCAC 41S All Rules: DHHS/Social Services Commission – The agency anticipates submitting rewritten rules at the June meeting. No action was taken.

10 NCAC 41T All Rules: DHHS/Social Services Commission – The agency anticipates submitting rewritten rules at the June meeting. No action was taken.

12 NCAC 11 .0502: NC Alarm Systems Licensing Board – The rewritten rule submitted by the agency was approved by the Commission. Commissioner Jeffrey Gray recused himself on this issue.

15A NCAC 2E .0502: DENR/Environmental Management Commission – The rewritten rule submitted by the agency was approved by the Commission

15A NCAC 18A .3307; .3313; .3319; .3323; .3324; .3327; .3330; .3331; .3334: Commission for Health Services - No action was taken.

16 NCAC 6E .0301: State Board of Education – The rewritten rule submitted by the agency was approved by the Commission.

19A NCAC 2D .0601: Department of Transportation – Last month’s objection to the rule was rescinded and the rule was approved. The Department submitted documentation from the Department of Insurance that a surety bond is appropriate.

23 NCAC 2C .0308: State Board of Community Colleges – The rewritten rule submitted by the agency was approved by the Commission.

23 NCAC 2D .0202: State Board of Community Colleges – The rewritten rule submitted by the agency was approved by the Commission.

**LOG OF FILINGS**

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 42B .2407; 42 C .2406; 42D .1832: NC Medical Care Commission - These rules were withdrawn by the agency and refilled for review at the June meeting.

15A NCAC 6G .0101: DENR-Soil and Water Conservation Commission – The Commission objected to this rule based on lack of authority to incorporate by reference the NC-CREP SOP manual, a manual under the control of the agency’s own staff.

15A NCAC 6G .0102: DENR-Soil and Water Conservation Commission – The Commission objected to this rule due to lack of statutory authority and ambiguity. It is unclear in (a), lines 6-8, the difference between “acreage accepted” into CREP and “acreage

**RULES REVIEW COMMISSION**

enrolled” in CREP and “CREP Enrollments” and “NC-CREP 3 Enrollments.” There is no authority for the Commission to determine outside of rulemaking “other identified priorities” for an applicant to meet, as it does in (a) (5).

15A NCAC 6G .0103; .0104; .0105; .0106: DENR-Soil and Water Conservation Commission – The Commission extended the period of review on these rules to determine consistency of terms with the other two rules.

15A NCAC 10B .0203: NC Wildlife Resources Commission – The Commission objected to this rule due to ambiguity. In (b)(2)(C), it is not clear what is meant by “youth either sex deer hunts.” This objection applies to existing language in the rule.

15A NCAC 10B .0209: NC Wildlife Resources Commission – The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.

15A NCAC 10C .0205: NC Wildlife Resources Commission - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.

15A NCAC 10C .0211: NC Wildlife Resources Commission – The Commission objected to this rule due to ambiguity. It is not clear who would be considered a “competent authority”. This objection applies to existing language in the rule.

15A NCAC 10C .0305: NC Wildlife Resources Commission - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.

15A NCAC 10D .0103: NC Wildlife Resources Commission - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.

15A NCAC 10H .0301: NC Wildlife Resources Commission - The Commission extended the period of review to give the agency time to determine if any institutions or agencies of government, including the Wildlife Resources Commission itself are intended to be exempt from any provisions of this rule and to explore the consistency of this rule with the state law concerning captivity.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Mr. DeLuca asked the Commission to authorize staff who attend NASS/ACR conferences during fiscal year 2001-2002 to stay at the conference headquarters hotel(s) for the conference rate. Many of the functions start early and go into the late evening hours. It is more convenient and safer to stay at the headquarters hotel(s). In addition the conference rate is often less expensive than the regular rates for any of the other hotels in the area. The Commission approved on a motion by Commissioner Arrowood.

The next meeting will be on Thursday, June 21, 2001.

The meeting adjourned at 11.17 a.m.

Respectfully submitted,  
Lisa Johnson

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**AGENDA**  
**RULES REVIEW COMMISSION**  
*June 21, 2001*

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
  - A. Department of Agriculture Structural Pest Control Committee– 2 NCAC 34 .0502: Objection on 12/21/00 (DeLuca)
  - B. DHHS/Social Services Commission - 10 NCAC 41S All Rules: Extend period of review; objection to .0612 and .0704 on 04/19/01 (DeLuca)
  - C. DHHS/Social Services Commission – 10 NCAC 41T .0106; .0201: Extend period of review on 04/19/01 (DeLuca)
  - D. DENR-Soil and Water Conservation Commission - 15A NCAC 6G .0101 and .0102: Objection on 05/17/01 (DeLuca)
  - E. DENR-Soil and Water Conservation Commission – 15A NCAC 6G .0103 - .0106 Extend period of review on 05/17/01 (DeLuca)
  - F. NC Wildlife Resources Commission - 15A NCAC 10B .0203: Objection on 05/17/01 (Bryan)
  - G. .NC Wildlife Resources Commission - 15A NCAC 10C .02011: Objection on 05/17/01 (Bryan)
  - H. .NC Wildlife Resources Commission - 15A NCAC 10H .0301: Extend period of review on 05/17/01 (Bryan)
  - I. Commission for Health Services – 15A NCAC 18A .3307; .3313; .3319; .3323; .3324; .3327; .3330; .3331; .3334: Objection on 04/19/01 (Bryan)
- IV. Review of rules (Log Report #176)
- V. Commission Business
- VI. Next meeting: Thursday, July 19, 2001

**CONTESTED CASE DECISIONS**

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**

JULIAN MANN, III

**Senior Administrative Law Judge**

FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

*Sammie Chess Jr.*

*Beecher R. Gray*

*Melissa Owens Lassiter*

*James L. Conner, II*

*Beryl E. Wade*

*A.B. (Butch) Elkins*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOL BEVERAGE CONTROL COMMISSION</b>				
Dano's, Inc. v. NC ABC Commission	96 ABC 0250	Gray	03/16/01	
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
NC ABC Commission v. A-1 Stop Food Store, Inc., T/A One Stop Grocery	00 ABC 0410	Gray	01/17/01	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC Beverage Control Commission v. Rhonda Davis Lemons, Ind. T/A	00 ABC 0965	Mann	02/05/01	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
NC ABC Commission v. Alliance Corp of Fayetteville, T/A Pavillion	00 ABC 1439	Anderson	04/05/01	
<b>BOARD OF MORTUARY SCIENCE</b>				
NC Board of Mortuary Science v. R.L. Sanders Funeral Home, Hugh Sanders and Demetrice Brewington	99 BMS 1180	Lassiter	11/27/00	
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Terry Ramey D/B/A/Ramey's Wrecker Service v. NC Dept. of Crime Control & Public Safety, NC State Highway Patrol	99 CPS 1160	Morrison	01/26/01	15:17 NCR 1594
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
Kenneth E. Brooks v. NC Crime Victims Compensation Commission	00 CPS 1048	Lassiter	12/21/00	
Kathy Oates Parzygnat v. NC Crime Victims Compensation Commission	00 CPS 1054	Conner	01/29/01	
Dowu Thomas v. NC Crime Victims Compensation Commission	00 CPS 1090	Mann	01/17/01	
Derrick Davis v. NC Crime Victims Compensation Commission	00 CPS 1352	Gray	02/01/01	
Lisa D. Richmond (Lee) v. NC Crime Victims Compensation Commission	00 CPS 1489	Mann	03/29/01	
<b>HEALTH AND HUMAN SERVICES</b>				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 <sup>1</sup>	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
Anthony Clement v. Department of Health & Human Services	00 CRA 1501	Morrison	03/29/01	
Tyrone Banks v. Department of Health & Human Services	00 CRA 1759	Gray	01/16/01	
Terry Weathers v. Department of Health & Human Services	00 CRA 1769	Conner	02/14/01	
Fredrick Gilmore v. Department of Health & Human Services	00 CRA 2125 <sup>10</sup>	Morrison	03/21/01	
Marshall Johnson Jr v. Department of Health & Human Services	01 CRA 0337	Lassiter	05/09/01	
<b>Child Support Enforcement Section</b>				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	

**CONTESTED CASE DECISIONS**

David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00
Charles Jr. Lotharp v. Department of Health & Human Services	99 CSE 0626	Lassiter	02/09/01
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00
Richard Cook v. Department of Health & Human Services	99 CSE 0873 <sup>4</sup>	Chess	10/27/00
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Philip J. English v. Department of Health & Human Services	99 CSE 1489	Wade	05/02/01
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Tony R. Wood v. Department of Health & Human Services	99 CSE 1501	Gray	01/12/01
Samuel E. Massenberg, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 <sup>4</sup>	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Todd A. Flanders v. Department of Health & Human Services	00 CSE 0152	Mann	03/13/01
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Robert L. Coffey v. Department of Health & Human Services	00 CSE 0255 <sup>12</sup>	Gray	03/30/01
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Don Wesley King v. Department of Health & Human Services	00 CSE 0381	Mann	04/12/01
Robert L. Coffey v. Department of Health & Human Services	00 CSE 0385 <sup>12</sup>	Gray	03/30/01
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00

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Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Rodney C LeBlanc v. Department of Health & Human Services	00 CSE 0444	Mann	03/28/01
Ronnie N. Morgan v. Department of Health & Human Services	00 CSE 0446	Gray	01/17/01
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00
Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 <sup>2</sup>	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 <sup>2</sup>	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Anthony L. Reid v. Department of Health & Human Services	00 CSE 0647	Lassiter	01/16/01
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Ottis Hairr v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
Gregory C. Tweed v. Department of Health & Human Services	00 CSE 0876	Conner	01/25/01
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 <sup>3</sup>	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00

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Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00
Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 <sup>3</sup>	Conner	10/06/00
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00
Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00
Larry D Houston v. Department of Health & Human Services	00 CSE 1155	Gray	02/27/01
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00
Travis Armstrong v. Department of Health & Human Services	00 CSE 1283	Lassiter	02/22/01
Donald Curtin Weatherford v. Department of Health & Human Services	00 CSE 1345	Chess	04/06/01
Daniel J. Sandford v. Department of Health & Human Services	00 CSE 1350	Wade	02/13/01
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00
Tony E. Plyler v. Department of Health & Human Services	00 CSE 1447	Wade	01/12/01
Terry Isom v. Department of Health & Human Services	00 CSE 1463	Morrison	03/14/01
Teresa A. Ingraham v. Department of Health & Human Services	00 CSE 1464	Chess	12/29/00
Tommy William Carter v. Department of Health & Human Services	00 CSE 1485	Gray	01/31/01
Michael Hudson v. Department of Health & Human Services	00 CSE 1493	Wade	02/02/01
Robert M. Murray v. Department of Health & Human Services	00 CSE 1507	Lassiter	02/09/01
Misha C Mfum v. Department of Health & Human Services	00 CSE 1509	Wade	02/12/01
Kevin R. McCray v. Department of Health & Human Services	00 CSE 1525	Chess	01/30/01
Keith Everett Fick v. Department of Health & Human Services	00 CSE 1531	Lassiter	02/28/01
Jimmy Moore v. Department of Health & Human Services	00 CSE 1535	Conner	02/14/01
Stan Matthire v. Department of Health & Human Services	00 CSE 1536	Chess	01/30/01
Richard McCarson v. Department of Health & Human Services	00 CSE 1543	Mann	01/03/01
Calvin G. Carter v. Department of Health & Human Services	00 CSE 1546	Lassiter	02/09/01
Jesse T Jefferson III v. Department of Health & Human Services	00 CSE 1553	Conner	03/14/01
Mark Andrew Cohn v. Department of Health & Human Services	00 CSE 1560	Gray	02/09/01
Savoy L. Miler v. Department of Health & Human Services	00 CSE 1571	Lassiter	01/31/01
Elmer L. Mosley v. Department of Health & Human Services	00 CSE 1581	Wade	02/02/01
David E. Allen v. Department of Health & Human Services	00 CSE 1589	Lassiter	02/09/01
David W Morris v. Department of Health & Human Services	00 CSE 1591	Wade	02/13/01
Jonathan Gregg Holland v. Department of Health & Human Services	00 CSE 1592	Conner	02/14/01
David Bass Jr v. Department of Health & Human Services	00 CSE 1595	Mann	02/13/01
Clyde Michael Trout v. Department of Health & Human Services	00 CSE 1596	Morrison	01/03/01
Sharon S. Godwin v. Department of Health & Human Services	00 CSE 1598	Morrison	02/09/01
Vincent Ackerman v. Department of Health & Human Services	00 CSE 1599	Wade	02/13/01
Micheal King v. Department of Health & Human Services	00 CSE 1600	Conner	02/22/01
Johnny Drakakides v. Department of Health & Human Services	00 CSE 1608	Morrison	02/28/01
Phyllis A King v. Department of Health & Human Services	00 CSE 1609	Lassiter	02/20/01
Steven M Fletcher v. Department of Health & Human Services	00 CSE 1618	Conner	05/07/01
Bonita Ann Wilson v. Department of Health & Human Services	00 CSE 1619	Chess	02/27/01
Bernie Mayr Jr v. Department of Health & Human Services	00 CSE 1622	Morrison	01/31/01
Stephen N Powers v. Department of Health & Human Services	00 CSE 1623	Lassiter	02/20/01
Kenneth B Thomas v. Department of Health & Human Services	00 CSE 1624	Mann	02/21/01
Jeffrey Pullum v. Department of Health & Human Services	00 CSE 1625	Mann	03/30/01
Reginald Sanders v. Department of Health & Human Services	00 CSE 1626	Wade	02/20/01
Cleveland J Johnson v. Department of Health & Human Services	00 CSE 1628	Chess	02/27/01
Mark D Kane v. Department of Health & Human Services	00 CSE 1634	Morrison	03/13/01
Charles M Edwards v. Department of Health & Human Services	00 CSE 1635	Lassiter	02/20/01
Samuel E Ray v. Department of Health & Human Services	00 CSE 1636	Gray	03/22/01
Stephen Hiles v. Department of Health & Human Services	00 CSE 1638	Conner	02/22/01
Richard L Hannon v. Department of Health & Human Services	00 CSE 1639	Chess	03/22/01
Ricky L McCartney v. Department of Health & Human Services	00 CSE 1641	Wade	03/05/01
Timothy F Fulbright v. Department of Health & Human Services	00 CSE 1647	Morrison	02/20/01
David E Evans v. Department of Health & Human Services	00 CSE 1648	Lassiter	02/20/01
James David Johnson Jr v. Department of Health & Human Services	00 CSE 1650	Wade	02/20/01
Dale F Green v. Department of Health & Human Services	00 CSE 1651	Conner	03/14/01
Michael Dewayne Hester v. Department of Health & Human Services	00 CSE 1653	Gray	02/20/01
Mark A Pekuri v. Department of Health & Human Services	00 CSE 1658	Lassiter	02/28/01
Ronny S Marth v. Department of Health & Human Services	00 CSE 1661	Conner	03/22/01
Curtis B Blakney v. Department of Health & Human Services	00 CSE 1670	Gray	02/20/01
Richard Bourbon Jr. v. Department of Health & Human Services	00 CSE 1674	Lassiter	03/12/01
James M McCoy v. Department of Health & Human Services	00 CSE 1678	Wade	02/20/01
Michael Wilder Sr v. Department of Health & Human Services	00 CSE 1677	Conner	03/14/01
Carl R Cooper v. Department of Health & Human Services	00 CSE 1682	Lassiter	02/27/01
James Scott Lee v. Department of Health & Human Services	00 CSE 1688	Conner	02/15/01
Osmer Marshall Harris v. Department of Health & Human Services	00 CSE 1692	Gray	03/30/01
Robert E Peterson Jr. v. Department of Health & Human Services	00 CSE 1696	Lassiter	02/27/01
William A Caudle Jr v. Department of Health & Human Services	00 CSE 1699	Conner	03/14/01
Karen R. McLean v. Department of Health & Human Services	00 CSE 1707	Gray	01/12/01
Horace Thompson King Iv v. Department of Health & Human Services	00 CSE 1708	Mann	04/12/01
Jonathan B Frazier v. Department of Health & Human Services	00 CSE 1715	Gray	02/27/01
Daniel L. Phillips v. Department of Health & Human Services	00 CSE 1717	Morrison	01/31/01
Mauricio Lopez-Granados v. Department of Health & Human Services	00 CSE 1729	Gray	02/06/01

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Emar Ifediora v. Department of Health & Human Services	00 CSE 1731	Morrison	02/27/01
John R Davis v. Department of Health & Human Services	00 CSE 1747	Conner	03/14/01
Martin W Rogers v. Department of Health & Human Services	00 CSE 1748	Wade	03/05/01
Ronald F Channell v. Department of Health & Human Services	00 CSE 1749	Conner	03/14/01
Louis William v. Department of Health & Human Services	00 CSE 1754	Lassiter	02/27/01
Robert Barry Jenkins Jr v. Department of Health & Human Services	00 CSE 1755	Gray	03/13/01
John F McCollum v. Department of Health & Human Services	00 CSE 1760	Wade	02/28/01
Craig S Murphy v. Department of Health & Human Services	00 CSE 1765	Morrison	04/04/01
John B Cox v. Department of Health & Human Services	00 CSE 1766	Lassiter	02/27/01
Anthony D Hines v. Department of Health & Human Services	00 CSE 1771	Gray	02/27/01
Gary E Nielsen v. Department of Health & Human Services	00 CSE 1772	Mann	02/28/01
James Faison v. Department of Health & Human Services	00 CSE 1774	Lassiter	03/05/01
Charles Junot v. Department of Health & Human Services	00 CSE 1775	Morrison	02/27/01
Richard Cook v. Department of Health & Human Services	00 CSE 1777	Conner	03/14/01
Kenneth E Frost v. Department of Health & Human Services	00 CSE 1783	Conner	03/14/01
George L Hart Jr. v. Department of Health & Human Services	00 CSE 1784	Morrison	02/27/01
Marti M Smith v. Department of Health & Human Services	00 CSE 1788	Lassiter	03/27/01
Tammy L Galdones v. Department of Health & Human Services	00 CSE 1800	Wade	03/08/01
Tarrence U Jackson v. Department of Health & Human Services	00 CSE 1802	Conner	03/14/01
Martin L Wheeler Jr v. Department of Health & Human Services	00 CSE 1803 <sup>13</sup>	Chess	04/05/01
Clarence McCorkle, Jr v. Department of Health & Human Services	00 CSE 1805	Chess	02/26/01
Joseph P Bell v. Department of Health & Human Services	00 CSE 1807	Morrison	03/12/01
Lionel Cox v. Department of Health & Human Services	00 CSE 1808	Lassiter	03/27/01
Clinton Wilson v. Department of Health & Human Services	00 CSE 1810	Wade	03/08/01
James F Forney Jr v. Department of Health & Human Services	00 CSE 1811	Conner	03/14/01
Rodney Foster v. Department of Health & Human Services	00 CSE 1813	Gray	03/09/01
Jimmie Lee Nesbitt v. Department of Health & Human Services	00 CSE 1814	Mann	03/21/01
George Smith v. Department of Health & Human Services	00 CSE 1815	Morrison	04/10/01
James S Rollins v. Department of Health & Human Services	00 CSE 1816	Lassiter	03/12/01
Johnny Worth Deaver v. Department of Health & Human Services	00 CSE 1817	Morrison	03/13/01
Shawn T Miller v. Department of Health & Human Services	00 CSE 1818	Wade	03/08/01
Adrian Dixon v. Department of Health & Human Services	00 CSE 1820	Chess	03/19/01
Donna M Ledbetter v. Department of Health & Human Services	00 CSE 1823	Conner	03/14/01
Mark Jeffrey Duncan v. Department of Health & Human Services	00 CSE 1825	Lassiter	02/20/01
Ricky Lee Barrett v. Department of Health & Human Services	00 CSE 1827	Wade	03/08/01
Cynthia W McDaniel v. Department of Health & Human Services	00 CSE 1830	Gray	03/13/01
James T Jarvis IV v. Department of Health & Human Services	00 CSE 1832	Morrison	03/12/01
Michael O'Neal Fletcher v. Department of Health & Human Services	00 CSE 1834	Wade	03/08/01
Manargo V Boykin v. Department of Health & Human Services	00 CSE 1836	Conner	03/14/01
Dexter Leon Scott v. Department of Health & Human Services	00 CSE 1839	Chess	02/27/01
Jacqueline R Graham v. Department of Health & Human Services	00 CSE 1845	Morrison	03/12/01
Rasheed R Owens v. Department of Health & Human Services	00 CSE 1846	Lassiter	03/30/01
Roger H Allred Jr. v. Department of Health & Human Services	00 CSE 1848	Wade	03/08/01
David M Greene v. Department of Health & Human Services	00 CSE 1852	Morrison	03/12/01
Michael T Wilfong v. Department of Health & Human Services	00 CSE 1854	Lassiter	03/12/01
Bobby Grady v. Department of Health & Human Services	00 CSE 1856	Conner	03/14/01
Martin L Wheeler Jr v. Department of Health & Human Services	00 CSE 1858 <sup>13</sup>	Chess	04/05/01
Dallas Walter Hamlett Jr v. Department of Health & Human Services	00 CSE 1859	Chess	04/02/01
Richard H Burkett v. Department of Health & Human Services	00 CSE 1864	Morrison	03/12/01
Terry L Barnette v. Department of Health & Human Services	00 CSE 1874	Gray	03/06/01
Benton P Welsh v. Department of Health & Human Services	00 CSE 1887	Wade	03/15/01
Kenney Curry v. Department of Health & Human Services	00 CSE 1888	Conner	03/21/01
Clarence McCorkle Jr v. Department of Health & Human Services	00 CSE 1890	Gray	03/15/01
William D Wall v. Department of Health & Human Services	00 CSE 1891	Mann	03/22/01
Cortez L Farrington v. Department of Health & Human Services	00 CSE 1892	Morrison	03/14/01
Lonnie Mathwig v. Department of Health & Human Services	00 CSE 1893	Lassiter	02/28/01
Carl Miller v. Department of Health & Human Services	00 CSE 1894	Morrison	01/31/01
Johnny Sellars v. Department of Health & Human Services	00 CSE 1895	Wade	03/15/01
Cuong Phu Le v. Department of Health & Human Services	00 CSE 1896	Conner	03/21/01
Stephen Budensiek v. Department of Health & Human Services	00 CSE 1898	Gray	03/15/01
Victor S Glass v. Department of Health & Human Services	00 CSE 1902	Morrison	02/28/01
James E Smith v. Department of Health & Human Services	00 CSE 1905	Wade	03/15/01
Isaac L McCoy v. Department of Health & Human Services	00 CSE 1906	Conner	03/21/01
Dan L Puryear v. Department of Health & Human Services	00 CSE 1908	Gray	03/15/01
Chris Flowers v. Department of Health & Human Services	00 CSE 1911	Morrison	04/04/01
Maryann Denise Hardy v. Department of Health & Human Services	00 CSE 1913	Lassiter	04/04/01
Ray A Blackwell v. Department of Health & Human Services	00 CSE 1914	Wade	03/15/01
Jeremy F White v. Department of Health & Human Services	00 CSE 1916	Conner	03/21/01
Douglas C Fitzpatrick v. Department of Health & Human Services	00 CSE 1924	Mann	03/22/01
Johnny R Chance v. Department of Health & Human Services	00 CSE 1925	Wade	03/05/01
Jeffrey Kelly v. Department of Health & Human Services	00 CSE 1926	Conner	03/14/01
Martin Scott Evans v. Department of Health & Human Services	00 CSE 1932	Morrison	03/14/01
Israel Uzoma v. Department of Health & Human Services	00 CSE 1933	Morrison	03/14/01
Kevin Seay v. Department of Health & Human Services	00 CSE 1934	Lassiter	03/30/01
Robin Ramsey Parrott v. Department of Health & Human Services	00 CSE 1935	Conner	03/21/01
Roy Bethel Calhoun III v. Department of Health & Human Services	00 CSE 1939	Wade	03/15/01
Carnel Draughn Sr v. Department of Health & Human Services	00 CSE 1943	Lassiter	04/03/01
Clint Norris Jones v. Department of Health & Human Services	00 CSE 1944	Morrison	03/14/01
Tracy Clark v. Department of Health & Human Services	00 CSE 1961	Conner	03/23/01
Derwin Knight v. Department of Health & Human Services	00 CSE 1962	Chess	03/15/01
Robert L Harrell v. Department of Health & Human Services	00 CSE 1963	Gray	03/15/01
Sherrie Weaver v. Department of Health & Human Services	00 CSE 1964	Mann	03/22/01

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Andrea Wilson v. Department of Health & Human Services	00 CSE 1966	Lassiter	03/12/01
Anthony Short v. Department of Health & Human Services	00 CSE 1968	Wade	03/22/01
Mark Steven Harvey v. Department of Health & Human Services	00 CSE 1972	Conner	03/30/01
Barry L. Chandler v. Department of Health & Human Services	00 CSE 1973	Morrison	04/17/01
Kenneth Edison Jones v. Department of Health & Human Services	00 CSE 1976	Wade	03/29/01
Everett McClain Jr v. Department of Health & Human Services	00 CSE 1979	Gray	03/09/01
Rodney Glenn Whicker v. Department of Health & Human Services	00 CSE 1981	Morrison	03/14/01
Joseph J McDowell v. Department of Health & Human Services	00 CSE 1982	Lassiter	02/20/01
Ricky N Coley v. Department of Health & Human Services	00 CSE 1985	Conner	03/21/01
Ronald E Harvey v. Department of Health & Human Services	00 CSE 1987	Gray	04/11/01
Steven G Williams v. Department of Health & Human Services	00 CSE 1989	Morrison	03/14/01
Alton R Hunt v. Department of Health & Human Services	00 CSE 1990	Lassiter	03/30/01
Terrance Thompson v. Department of Health & Human Services	00 CSE 1991	Mann	03/22/01
Patrick Kevin Swann v. Department of Health & Human Services	00 CSE 1992	Wade	03/15/01
James A Bowditch Sr v. Department of Health & Human Services	00 CSE 1993	Conner	03/14/01
Roger D Mintz v. Department of Health & Human Services	00 CSE 1997	Morrison	01/31/01
Eugene Harris v. Department of Health & Human Services	00 CSE 1998	Lassiter	03/21/01
Jimmy Clark v. Department of Health & Human Services	00 CSE 1999	Conner	02/14/01
Nancy Sells v. Department of Health & Human Services	00 CSE 2001	Conner	02/14/01
Jeffery A Maness v. Department of Health & Human Services	00 CSE 2003	Gray	02/28/01
Jerry L Jones v. Department of Health & Human Services	00 CSE 2005	Morrison	03/14/01
Steven P Ray v. Department of Health & Human Services	00 CSE 2006	Lassiter	05/01/01
Kenneth D Abner v. Department of Health & Human Services	00 CSE 2008	Conner	03/22/01
Robert W MacDonald Sr. v. Department of Health & Human Services	00 CSE 2015	Wade	03/05/01
Norman Lee Fillers v. Department of Health & Human Services	00 CSE 2016	Conner	02/14/01
Gerald H Lord v. Department of Health & Human Services	00 CSE 2018	Gray	03/15/01
Michael William Smith v. Department of Health & Human Services	00 CSE 2019	Wade	04/04/01
Daniel H Caudill v. Department of Health & Human Services	00 CSE 2022	Chess	03/21/01
William R Payne v. Department of Health & Human Services	00 CSE 2023	Wade	03/15/01
Christopher Evans v. Department of Health & Human Services	00 CSE 2024	Conner	03/30/01
Jimmy D White v. Department of Health & Human Services	00 CSE 2026	Gray	03/22/01
Shawn E Richardson v. Department of Health & Human Services	00 CSE 2027	Mann	03/22/01
Franklin Givens v. Department of Health & Human Services	00 CSE 2028	Morrison	03/14/01
Myron S Pierce v. Department of Health & Human Services	00 CSE 2029	Lassiter	03/21/01
Terrence Dunlap v. Department of Health & Human Services	00 CSE 2030	Gray	03/21/01
Allen E Clyburn v. Department of Health & Human Services	00 CSE 2032	Chess	03/13/01
Sheila C Horne v. Department of Health & Human Services	00 CSE 2033	Wade	03/22/01
Shawn Braxton v. Department of Health & Human Services	00 CSE 2044	Gray	03/15/01
Derrick L Pope v. Department of Health & Human Services	00 CSE 2045	Conner	03/14/01
William Everett Banks Jr v. Department of Health & Human Services	00 CSE 2049	Morrison	03/14/01
Philip Ligatti v. Department of Health & Human Services	00 CSE 2058	Lassiter	02/20/01
Philip Ligatti v. Department of Health & Human Services	00 CSE 2059	Wade	02/20/01
Crystal Anne Barton v. Department of Health & Human Services	00 CSE 2064	Morrison	02/27/01
Chris Alexander King v. Department of Health & Human Services	00 CSE 2066	Wade	03/13/01
Marko D Perry v. Department of Health & Human Services	00 CSE 2067	Wade	03/22/01
James Thomas Smith v. Department of Health & Human Services	00 CSE 2068	Conner	03/23/01
Melvin T Green v. Department of Health & Human Services	00 CSE 2069	Chess	03/21/01
Dwayne Scott Barlow v. Department of Health & Human Services	00 CSE 2070	Gray	03/06/01
Harold D Overby Jr v. Department of Health & Human Services	00 CSE 2074	Morrison	02/20/01
Hamid Ehsani-Shishvan v. Department of Health & Human Services	00 CSE 2076	Mann	03/22/01
John William Berg Jr v. Department of Health & Human Services	00 CSE 2081	Conner	03/30/01
Jasper L Goodwin v. Department of Health & Human Services	00 CSE 2083	Gray	03/21/01
Alfredo Gomez v. Department of Health & Human Services	00 CSE 2092	Morrison	03/21/01
Jason A Knepshield v. Department of Health & Human Services	00 CSE 2093	Lassiter	03/26/01
Joseph L Sykes v. Department of Health & Human Services	00 CSE 2095	Conner	03/22/01
Michael R Sweat v. Department of Health & Human Services	00 CSE 2097	Conner	03/14/01
Russell L Brown v. Department of Health & Human Services	00 CSE 2105	Lassiter	03/21/01
Henry Johnson v. Department of Health & Human Services	00 CSE 2106	Gray	03/21/01
Victor L Foster Sr v. Department of Health & Human Services	00 CSE 2110	Morrison	03/05/01
Kimberly Sue Nance v. Department of Health & Human Services	00 CSE 2111	Lassiter	03/21/01
Jonathan P Deese v. Department of Health & Human Services	00 CSE 2112	Wade	02/02/01
David Bryant Shuping v. Department of Health & Human Services	00 CSE 2113	Conner	03/30/01
Christopher B Thompson v. Department of Health & Human Services	00 CSE 2123	Mann	03/22/01
Fredrick Gilmore v. Department of Health & Human Services	00 CSE 2124 <sup>10</sup>	Morrison	03/21/01
Dwayne Scott Barlow v. Department of Health & Human Services	00 CSE 2131	Wade	03/05/01
Randy L Galloway v. Department of Health & Human Services	00 CSE 2132	Conner	03/22/01
Joe L Green v. Department of Health & Human Services	00 CSE 2136	Gray	03/30/01
Paul Billiot v. Department of Health & Human Services	00 CSE 2137	Conner	03/30/01
Theodore Rasheed Akins v. Department of Health & Human Services	00 CSE 2142	Morrison	03/30/01
Anita Davis v. Department of Health & Human Services	00 CSE 2145	Lassiter	02/27/01
Marvin Price Jr v. Department of Health & Human Services	00 CSE 2146	Wade	04/04/01
Nathaniel Armstrong v. Department of Health & Human Services	00 CSE 2150	Gray	02/27/01
Samuel Thomas v. Department of Health & Human Services	00 CSE 2151	Morrison	03/30/01
Boulware, Rodney Durand v. Department of Health & Human Services	00 CSE 2154	Wade	03/13/01
Keith V Cunningham v. Department of Health & Human Services	00 CSE 2161	Gray	02/20/01
Kenneth Chapman v. Department of Health & Human Services	00 CSE 2163	Morrison	05/01/01
Derrick Link v. Department of Health & Human Services	00 CSE 2166	Mann	03/13/01
Kenneth W Kelly v. Department of Health & Human Services	00 CSE 2169	Wade	04/04/01
Stephen Lake Sargent v. Department of Health & Human Services	00 CSE 2176	Gray	03/30/01
Michael R Whitford v. Department of Health & Human Services	00 CSE 2178	Morrison	03/27/01
Christopher Scott v. Department of Health & Human Services	00 CSE 2182	Morrison	03/05/01
Aaron L Roper Sr v. Department of Health & Human Services	00 CSE 2187	Lassiter	04/03/01

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Robert Johnson v. Department of Health & Human Services	00 CSE 2199	Conner	05/07/01	
Melissa Reid v. Department of Health & Human Services	00 CSE 2201	Conner	04/17/01	
Jimmy K Wallace v. Department of Health & Human Services	00 CSE 2212	Morrison	03/29/01	
Guy John Harris v. Department of Health & Human Services	00 CSE 2215	Wade	04/04/01	
Rodger E Smith v. Department of Health & Human Services	00 CSE 2217	Morrison	04/03/01	
Robert T Crider v. Department of Health & Human Services	00 CSE 2219	Gray	04/03/01	
Octavius A Williams v. Department of Health & Human Services	00 CSE 2220	Wade	04/04/01	
James Banks Drane v. Department of Health & Human Services	00 CSE 2241	Wade	05/02/01	
Timothy Sweat v. Department of Health & Human Services	00 CSE 2248	Gray	04/19/01	
Timothy Odell Lindsey v. Department of Health & Human Services	00 CSE 2249 <sup>14</sup>	Morrison	04/10/01	
Timothy Odell Lindsey v. Department of Health & Human Services	00 CSE 2250 <sup>14</sup>	Morrison	04/10/01	
Juan P Thompson v. Department of Health & Human Services	00 CSE 2251	Lassiter	04/10/01	
Steven H Fagan v. Department of Health & Human Services	00 CSE 2255	Wade	05/02/01	
Kenneth Omar Tyson v. Department of Health & Human Services	00 CSE 2256	Conner	04/17/01	
Terrie Oatman v. Department of Health & Human Services	00 CSE 2263	Conner	04/17/01	
Richard E Chatman v. Department of Health & Human Services	00 CSE 2269	Morrison	04/10/01	
Brian E Presson v. Department of Health & Human Services	00 CSE 2271	Lassiter	05/02/01	
Charles Arthur Neal IV v. Department of Health & Human Services	00 CSE 2272	Conner	03/22/01	
Johnny Ray Gainey v. Department of Health & Human Services	01 CSE 0004	Gray	05/04/01	
Teller A Limon v. Department of Health & Human Services	01 CSE 0017	Morrison	03/27/01	
John Levine v. Department of Health & Human Services	01 CSE 0028	Mann	05/02/01	
Raphael Scott v. Department of Health & Human Services	01 CSE 0029	Lassiter	05/02/01	
Thomas F Rash Sr v. Department of Health & Human Services	01 CSE 0039	Gray	05/11/01	
Courtney Brown v. Department of Health & Human Services	01 CSE 0059	Lassiter	03/05/01	
Craig Lawrence Brooks v. Department of Health & Human Services	01 CSE 0074	Conner	05/07/01	
William L Anderson v. Department of Health & Human Services	00 CSE 0179	Conner	03/30/01	
Evelyn Brindle v. Department of Health & Human Services	01 CSE 0180	Chess	04/02/01	
Jason Rogers Sr v. Department of Health & Human Services	01 CSE 0221	Wade	05/02/01	
Gary Russell Chambliss Jr v. Department of Health & Human Services	01 CSE 0241	Conner	03/30/01	
Thomas Mammarelli v. Department of Health & Human Services	01 CSE 0255	Gray	04/11/01	
Drorester O Alexander v. Department of Health & Human Services	01 CSE 0367	Lassiter	04/10/01	
Danny Lee Williams v. Department of Health & Human Services	01 CSE 0400	Chess	05/03/01	
Jernava L Davis v. Department of Health & Human Services	01 CSE 0407	Morrison	05/09/01	
Teresa Diane Bell v. Department of Health & Human Services	01 CSE 0436	Wade	05/09/01	
Carlos Eugene Jacobs v. Department of Health & Human Services	01 CSE 0462	Lassiter	05/09/01	
Theodore Justice v. Department of Health & Human Services	01 CSE 0475	Conner	05/07/01	
Kimberly G Wadsworth v. Department of Health & Human Services	01 CSE 0510	Gray	05/11/01	
Larry O Anthony v. Department of Health & Human Services	01 CSE 0537	Wade	05/09/01	
<b>Division of Social Services</b>				
Mary Laforet v. Department of Health & Human Services	99 DCS 0372	Lassiter	01/12/01	
Emma Burkes (Edwards) v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 <sup>1</sup>	Wade	06/30/00	
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00	
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00	
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00	
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00	
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00	
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00	
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00	
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00	
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00	
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00	
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00	
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00	
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00	
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00	
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00	
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00	
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00	
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00	
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00	
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00	
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00	
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00	
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00	
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00	
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00	
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00	
Tameca Grant v. Department of Health & Human Services	00 DCS 1533	Wade	01/12/01	
Della T Austin for Christopher Moore v. Dept. of Health & Human Svcs.	00 DCS 1740	Lassiter	01/31/01	
Michael Anthony Bowden v. Department of Health & Human Services	00 DCS 2050	Lassiter	01/31/01	
Sanja S Whittington v. Department of Health & Human Services	00 DCS 2084	Morrison	02/12/01	
Fredrick Gilmore v. Department of Health & Human Services	00 DCS 2126 <sup>10</sup>	Morrison	03/21/01	
Benita J Marshall v. Department of Health & Human Services	01 DCS 0141	Morrison	03/30/01	
Susan E Hurley v. Department of Health & Human Services	01 DCS 0458	Lassiter	05/09/01	
Albemarle Mental Health Center, Developmental Disabilities: Substance Abuse Services v. NC Dept. of Health & Human Services, Division of Medical Assistance and NC Council of Community Mental Health, Developmental Disabilities and Substance Abuse Programs, Inc.	98 DHR 1598	Reilly	12/15/00	15:15 NCR 1440
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	

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Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00	
Carrie Jenkins, by and through her Guardian, John Jenkins v. NC Dept. of Health & Human Services	00 DHR 0119	Wade	02/14/01	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00	
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00	
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00	
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00	
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00	
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00	
Lenora M Brewer v Office of Administrative	00 DHR 0943	Conner	03/01/01	
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	
Janie Best v DHHS, NC Medial Examiner's Office	00 DHR 1029	Mann	02/20/01	
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Mildred Willis v. Avante of Wilson, NC Dept of Health & Human Services	00 DHR 1310	Conner	02/16/01	
Iola Jones v. NC Department of Human Resources	00 DHR 1320	Morrison	02/23/01	
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Chawona Lynn Emanuel v. Department of Health & Human Services	00 DHR 1360	Gray	01/31/01	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1371 <sup>6</sup>	Gray	01/09/01	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR-DOFS	00 DHR 1382	Gray	11/21/00	
Lee T. Wilson v. NC DHHS, Office of the Controller	00 DHR 1383 <sup>5</sup>	Gray	01/09/01	
Penny Jean Leary for Hyailey Okanoto v. Div. of Medical Assistance	00 DHR 1400	Gray	01/11/01	
Sylvia Davis v. Homeplace of Burlington Nurse Aide Registry	00 DHR 1488	Mann	02/26/01	
Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00	
William C Wetmore v. DHHS, Health Care Personnel Registry Invstgns.	00 DHR 1744	Mann	02/08/01	
Barbara Hayes v. Sampson Co Dept of Social Services, Sarah W. Bradshaw, Director & NC DHHS	00 DHR 2040	Gray	02/21/01	
Beatrice Harper v. NC Human & Health Services	00 DHR 2048	Gray	02/06/01	
Melissa M. Hale v. State of NC Office of Administrative Hearings	00 DHR 2077	Chess	01/26/01	
Christian Child Development v. NC Child Care Division	00 DHR 2128	Chess	04/26/01	
James Crosland and wife, Carolyn Crosland v. Polk County Dept. of Social Services	00 DHR 2130	Gray	01/04/01	
Brandi Joanna Padgett v. NC Department of Human Resources	00 DHR 2277	Gray	02/26/01	
Rita Wilson v. Dept. of D.S.S. Cleveland County	01 DHR 0205	Elkins	04/18/01	
Patricia A. Jackson v. Office of Administrative Hearings	01 DHR 0206	Lassiter	03/27/01	
Kyna Z Robinson v. DHHS, Division of Child Development	01 DHR 0294	Lassiter	04/04/01	
Amy Cahoon v. John Umstead Hospital & DHHS	01 DHR 0356	Lassiter	04/20/01	
Beverly Merritt v. Nash County Dept Social Services – Food Stamp	01 DHR 0472	Lassiter	04/19/01	
Charles Yancey Watson v. Currituck County Dept of Social Services	01 DHR 0507	Lassiter	04/19/01	
Paula Martin v. DHHS, Division of Social Services	01 DHR 0536	Lassiter	04/20/01	
Clay Rogers Sr. v. DHHS, Division of Medical Assistance	01 DHR 0638	Morrison	04/23/01	
Reda M (J) Staton and (Vanee, Joseph & Jaitel) v. (DMA) Division of Medical Assistance	01 DHR 0668	Lassiter	05/07/01	
<b>Division of Facility Services</b>				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00	
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR 1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00	
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00	
Nancy Yarbrough Allen v. DHHS, Division of Facility Services	00 DHR 0356	Gray	06/23/00	
Greensboro Heart Center, LLC v. NC DHHS, Division of Facility Services, Certificate of Need Section & The Moses H. Cone Memorial Hospital & The Moses H. Cone Memorial Hospital Operating Corporation	00 DHR 0375	Lassiter	12/19/00	
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
Helen Ramsey v. DHHS, Division of Facility Services	00 DHR 0578	Conner	01/29/01	
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00	
Celestine L. Bristol v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00	
Anthony Alan Bennett v DHHS, Division of Facility Services	00 DHR 0664	Conner	03/06/01	
Violet Anne Berliner v. DHHS, Division of Facility Services	00 DHR 0685	Gray	11/17/00	
MariaGoretta Adaugo Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00	
Charlotte A Withers v. DHHS, Division of Facility Services	00 DHR 0754 <sup>11</sup>	Gray	03/15/01	
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00	
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00	

**CONTESTED CASE DECISIONS**

Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00	
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR 1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00	
Faleisha Cassandra Worsley v. DHHS, Division of Facility Services	00 DHR 1013	Chess	02/22/01	
Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00	
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00	
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00	
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00	
Charlotte A Withers v. DHHS, Division of Facility Services	00 DHR 1127 <sup>1</sup>	Gray	03/15/01	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00	
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00	
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00	
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 DHR 1299	Morrison	12/18/00	
Mary Carmon Williams v. DHHS, Division of Facility Services	00 DHR 1308	Conner	02/01/01	
Ruby L. Laughter v. DHHS, Division of Facility Services	00 DHR 1346	Lassiter	01/31/01	
Lakiya S Mewborn v. DHHS, Division of Facility Services	00 DHR 1437	Gray	02/19/01	
Jonathan L. Merrell & Judith A. Merrell, and Eyring Realty, Inc. v. DHHS, Division of Facility Services & S & R Healthcare, Inc.	00 DHR 1461	Mann	01/31/01	
Ms Erman M Patterson v. DHHS, Division of Facility Services	00 DHR 1465	Gray	02/16/01	
Elois Little v. DHHS, Division of Facility Services	00 DHR 1790	Morrison	02/15/01	
Teresa A. Monk v. DHHS, Division of Facility Services	00 DHR 2170	Elkins	05/01/01	
Janet Stephens v. DHHS, Division of Facility Services	01 DHR 0008	Mann	02/08/01	
Octavia L Hill v. WisperPines Nursing Home of Fayetteville and DHHS, Division of Facility Services	01 DHR 0009	Mann	02/08/01	
Stephanie Mc Knight v. DHHS, Division of Facility Services	01 DHR 0235	Chess	04/02/01	
Octavia Hill v. Whispering Pines Nursing Home of Fayetteville and Dept. of Human Services, Division of Facility Services	01 DHR 0304	Elkins	04/12/01	
<b>DEPARTMENT OF AGRICULTURE</b>				
Norman Dudgeon dba Mountain Vista Growers v. NC Department of Agriculture	00 DAG 0676	Gray	02/16/01	
<b>ENVIRONMENT AND NATURAL RESOURCES</b>				
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR 501
Willie Setzer, individually and as President of Setzer Brothers Well Boring & Drilling Co v. Dept of Environment & Natural Resources	98 EHR 1260 <sup>15</sup>	Chess	12/03/00	
Willie Setzer, individually and as President of Setzer Brothers Well Boring & Drilling Co v. Dept of Environment & Natural Resources	98 EHR 1261 <sup>15</sup>	Chess	12/03/00	
Willie Setzer, individually and as President of Setzer Brothers Well Boring & Drilling Co v. Dept of Environment & Natural Resources	98 EHR 1262 <sup>15</sup>	Chess	12/03/00	
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00	
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00	
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1136 <sup>7</sup>	Lassiter	01/01/00	
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR 696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00	
Sarah Robbins Collins v. Dept. of Environment & Natural Resources	99 EHR 1265	Wade	11/28/00	
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR 343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00	
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00	
Heater Utilities, Inc. v. Department of Environment & Natural Resources	99 EHR 1609	Gray	04/25/01	
Thomas Tilley, Trustee v. Dept. of Environment & Natural Resources	99 EHR 1627 <sup>7</sup>	Lassiter	01/01/00	
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00	
Leonard F. Sutton v. Division of Forest Resources	00 EHR 0072	Morrison	12/18/00	15:15 NCR 1435
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR 693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00	
Samuel A. Perrella v. Div. of Environmental Health, New Bern, NC	00 EHR 0219	Gray	11/16/01	
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00	
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00	
Turnbull Company LLC v. NC Dept of Environment & Natural Resources	00 EHR 0881	Wade	02/02/01	
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00	
Dudley A. Dawson v. NC DENR, (Person County Health Department)	00 EHR 0920	Lassiter	02/15/01	
Mark Oil Company, Inc. v. Department of Environment & Natural Resources	00 EHR 0926	Gray	12/29/00	
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00	
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00	
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00	
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00	
Arland Community Development v. Dept. of Env. & Natural Resources	00 EHR 1300	Mann	03/08/01	
Ed Jones, Jr. v. Department of Environment & Natural Resources	00 EHR 1385	Morrison	04/24/01	
Randy Graham v. Environmental Health of Alamance County	00 EHR 1393	Gray	12/29/00	
Clark Stone Company, Inc. v. NC DENR, Div. of Land Resources and Appalachian Trail Conference; National Conservation Association; Unincorporated Association of Citizens to Protect Belview Mountain; Ollie Cox and Faye Williams	00 EHR 1468	Lassiter	05/02/01	15:23 NCR 1955
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00	
Lisa King v. Brunswick County Health Department	00 EHR 1778	Lassiter	01/19/01	
Robert H. Bilbro v. DENR/Division of Coastal Management	00 EHR 1843	Chess	01/19/01	
Levi Moore, Jr. v. Brunswick County Health Department	00 EHR 1883	Lassiter	02/13/01	

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Kelly Jones v. Office of Administrative Hearings	01 EHR 0007	Chess	02/22/01	
John B Baird v. Chatham Co Health Dept., Siler City, NC	01 EHR 0043	Morrison	05/03/01	
Phillip Brown, Lucy Brown v. Dept. of Env. & Natural Resources	01 EHR 0103	Morrison	04/24/01	
<b>Coastal Resources Commission</b>				
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR 342
<b>Division of Air Quality</b>				
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00	
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00	
MW Clearing and Grading, Inc. v. DENR, Div. of Air Quality	00 EHR 0286	Wade	11/28/00	
Guy M Long III v. NC DENR, Division of Air Quality	00 EHR 0975	Chess	01/19/01	
Billy V. Cain v. NC DENR, Division of Air Quality	00 EHR 1351	Lassiter	01/11/01	
Mike Cooper v. NC DENR< Division of Air Quality	00 EHR 2013	Conner	04/23/01	
<b>Division of Land Resources</b>				
James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00	
<b>Division of Marine Fisheries</b>				
Harold & Jettie Babson v. DENR, Division of Marine Fisheries	98 EHR 0815	Gray	12/14/00	
<b>Division of Water Quality</b>				
Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00	
Town of Wallace v. NCDENR, Division of Water Quality	00 EHR 0247	Lassiter	10/05/00	
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00	
J.C. Faw v. NC DENR, Division of Water Quality	00 EHR 0825	Wade	04/04/01	
John P. Hendrix v. NC DENR, Div. of Water Quality	00 EHR 0966	Wade	03/09/01	
Johnny Barrier, Jonas Ridge Nursing Home v. NC DENR, Division of Water Quality	00 EHR 2155	Conner	02/26/01	
<b>Division of Waste Management</b>				
A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR 636
<b>JUSTICE</b>				
<b>Alarm Systems Licensing Board</b>				
John Martin Canter v Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00	
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00	
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00	
Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00	
Phillip Randall Millard v. Alarm Systems Licensing Board	00 DOJ 2052	Mann	04/11/01	
Brain Craig Glass v. Alarm Systems Licensing Board	00 DOJ 2053	Gray	02/09/01	
Jody Durell Stancil v. Alarm Systems Licensing Board	00 DOJ 2054	Conner	02/22/01	
James Eric Rollings v. Alarm Systems Licensing Board	01 DOJ 0014	Mann	03/15/01	
Jerry Lee Futrell v. Alarm Systems Licensing Board	01 DOJ 0107	Mann	03/27/01	
<b>Education and Training Standards Division</b>				
Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00	
Emmit O'Neal Thomas v. Sheriffs' Educ. & Training Stds. Commission	99 DOJ 0845	Lassiter	04/06/01	
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00	
Leonard Karle Mapp v. NC Criminal Justice Educ & Trng Stds Comm	99 DOJ 1555	Gray	01/16/01	
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00	
Larry G. McClain v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00	
Ersal Overton, III v. Sherriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR 883
Keith Allen Murchison v. Sheriffs' Education & Training Stds Comm.	00 DOJ 0006	Lassiter	06/26/00	
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00	
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00	
Larry Kevin Dean v. NC Criminal Justice Education & Training Standards Commission	00 DOJ 0610	Wade	02/06/01	
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00	
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00	
Andrew Newsom v. Sheriffs' Education & Training Standards Comm.	00 DOJ 0909	Conner	03/05/01	
Gary J Watts v. Sheriffs' Education & Training Standards Commission	00 DOJ 0910	Lassiter	03/02/01	
Charles L. Garner, Jr. v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0993	Morrison	01/05/01	
James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00	
Christopher L. Dammons v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 1071	Mann	04/11/01	
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00	
William J. Sciacca v. Sheriffs' Education & Training Stds. Comm	00 DOJ 1555	Mann	01/17/01	
Rosamel T. Gresham v. Sherriffs' Education & Training Standards Comm.	00 DOJ 1557	Lassiter	12/20/00	
<b>Private Protective Services Board</b>				
Leisa M Roberts v. Private Protective Services Board	99 DOJ 0112	Conner	02/14/01	
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00	

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George Thomas Bond v. Private Protective Services	00 DOJ 0014	Conner	05/11/00	
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00	
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00	
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00	
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00	
Tammy Goforth Nichols v Private Protective Services Board	00 DOJ 2051	Gray	02/09/01	
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00	
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00	
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00	
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00	
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00	
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00	
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00	
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00	
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00	
Donna Rena Reynolds v. Private Protective Services Board	01 DOJ 0011	Mann	03/27/01	
Richard Asiedu v Private Protective Services Board	01 DOJ 0012	Gray	02/07/01	
Derrick Jaie Wiser v. Private Protective Services Board	01 DOJ 0013	Mann	03/27/01	
David Heath Manring v. Private Protective Services Board	01 DOJ 0127	Mann	03/09/01	
<b>PUBLIC INSTRUCTION</b>				
Doris G. Branch v. NC Department of Public Instructions	98 EDC 0368	Gray	10/08/00	15:13 NCR 1233
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00	
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR 45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00	
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00	
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR 492
Ray N. Anderson v. NC Department of Public Instruction	00 EDC 1226	Gray	03/16/01	
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00	
Christopher Paul Thompson v. Polk County School System	00 EDC 1291	Conner	12/28/00	
<b>DEPARTMENT OF INSURANCE</b>				
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00	
<b>DEPARTMENT OF LABOR</b>				
Secret Spot Surf Shop, Inc. v. NC Department of Labor	00 DOL 1213	Gray	03/26/01	
GTF, Inc. D/b/a Creekside Restaurant & Bar v. NC Dept. of Labor	01 DOL 0226	Morrison	04/06/01	
<b>MISCELLANEOUS</b>				
Nancy York Vorys v. Raleigh Police Department	00 MIS 1436	Gray	10/27/00	
Shane C. Balance v. Watauga County District Attorney and Watauga County Superior Court	00 MIS 1685	Mann	01/31/01	
<b>STATE PERSONNEL</b>				
Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services	95 OSP 1011	Gray	08/29/00	
Sheila Harris	96 OSP 0686	Mann	02/12/01	
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00	
Roosevelt Wilkerson, Jr. v. NC Department of Correction	98 OSP 1198 <sup>8</sup>	Gray	01/30/01	
Marshe Morgan v. Black Mount Center, NC DHHS	98 OSP 1302	Gray	07/11/00	15:05 NCR 624
Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00	
Roosevelt Wilkerson, Jr. v. NC Department of Correction	99 OSP 0084 <sup>8</sup>	Gray	01/30/01	
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR 47
Betty R. Holman v. Broughton Hospital	99 OSP 0580	Hunter	05/08/00	
Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00	
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR 772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00	
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR 781
Ronald Dennis Long v. Western Carolina University	99 OSP 0870 <sup>9</sup>	Chess	02/01/01	
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR 5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00	
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR 924
Mary Brown-Barbee v. Dept. of Environment & Natural Resources	99 OSP 1087	Morrison	12/11/01	
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00	
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00	
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00	
Ronald Dennis Long v. Western Carolina University	99 OSP 1347 <sup>9</sup>	Chess	02/01/01	
Benny Callihan v. Department of Correction	99 OSP 1381	Wade	09/06/00	
Russell J. Suga v. Employment Security Commission of NC	99 OSP 1649	Gray	06/09/00	15:04 NCR 508
Thelma T. Utley v. NC State University	99 OSP 1708	Conner	12/08/00	
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00	
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00	
Brenda Parker v. NC Div. of Motor Vehicles	00 OSP 0021	Gray	01/19/01	15:16 NCR 1545
Forrest Travis Coston v. NC Dept of Crime Control & Public Safety, NC	00 OSP 0022	Conner	01/24/01	

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State Highway Patrol			
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00
Robert Boyd Choat v. Department of Correction	00 OSP 0102	Reilly	07/24/00
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 <sup>5</sup>	Reilly	09/28/00
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 <sup>5</sup>	Reilly	09/28/00
Eldee L Brown Jr v. NC Department of Commerce	00 OSP 0180	Morrison	12/19/00
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00
Robert L. Swinney v. NC Department of Transportation	00 OSP 0281	Morrison	12/20/00
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00
Ronald Dennis Long v. Western Carolina University	00 OSP 0413 <sup>9</sup>	Chess	02/01/01
Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton	00 OSP 0443	Lassiter	07/24/00
Starr M. Strickland v. Correction Enterprises, NC Dept. of Correction	00 OSP 0460	Chess	10/24/00
Mary D. Eurquhart v. NC DOT, Division of Motor Vehicles	00 OSP 0470	Wade	03/09/01
George W. Baysden, Jr. v. NC Department of Corrections	00 OSP 0483	Chess	12/20/00
Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00
Paula M Wilson v. NC Department of Correction	00 OSP 0581	Morrison	12/15/00
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00
Pathe S. Vivek v. NC Dept. of Environment & Natural Resources	00 OSP 0631	Smith	01/12/01
Linda O. Leder v. NC Department of Correction	00 OSP 0632	Conner	09/29/00
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00
Robert L. Moore v. Pitt County Mental Health Dev Disabilities/SA	00 OSP 0708	Wade	02/05/01
Warren Carlos Moore v. Pitt County Menatl Health Dev Disabilities/SA	00 OSP 0713	Wade	02/05/01
Ronald Dennis Long v. Western Carolina University	00 OSP 0745 <sup>9</sup>	Chess	02/01/01
Cheryl R Prather v. NC Department of Correction	00 OSP 0756	Chess	03/22/01
Guy M Murrell v. Neuse Center for Mental Health	00 OSP 0790	Gray	12/12/00
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00
Ronald Dennis Long v. Western Carolina University	00 OSP 0821 <sup>9</sup>	Chess	02/01/01
Ronald Dennis Long v. Western Carolina University	00 OSP 0822 <sup>9</sup>	Chess	02/01/01
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00
Maurice Alson v. NC Department of Insurance	00 OSP 0953	Lassiter	04/03/01
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00
Ronald Dennis Long v. Western Carolina University	00 OSP 1094 <sup>9</sup>	Chess	02/01/01
Bernadine Johnson v. Department of Correction	00 OSP 1118	Morrison	11/20/00
Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00
Pamela DeVose v. Durham County DSS	00 OSP 1189	Conner	12/28/00
Billy Anderson v. NC Department of Correction	00 OSP 1196	Gray	03/08/01
Steven Allen Slocum v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol	00 OSP 1203	Conner	12/28/00
Robert J. Lane v. Jim Webb, NC Special Care Center (DHR)	00 OSP 1241	Gray	01/23/01
Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00
Linda Sharp Brady v. Halifax Co. Department of Social Services	00 OSP 1263	Gray	02/23/01
Wayne M. Wise v. NCCU-WNCU	00 OSP 1269	Gray	01/09/01
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00
David A. Greats v. NC Department of Correction	00 OSP 1282	Conner	11/09/00
Ronald Dennis "Butch" Long v. Western Carolina University	00 OSP 1307	Chess	02/02/01
Ronald Dennis "Butch" Long v. Western Carolina University	00 OSP 1325	Chess	04/12/01
Richard A Patterson v. Currituck Co. EMS, Currituck County, NC 27929	00 OSP 1330	Conner	02/21/01
Jacqueline G Williams v. Kathryn Flora, Director of Currituck County	00 OSP 1331	Conner	03/27/01
Ronald Dennis "Butch" Long v. Western Carolina University	00 OSP 1349	Chess	04/12/01
Wayne Davis v. Shelby City Schools	00 OSP 1402	Lassiter	12/20/00
Larry Joel Williams v. Durham Co. Gov't, The Durham Center	00 OSP 1417	Gray	01/24/01
Michael T. Winbush v. Winston-Salem State University	00 OSP 1429	Overby	04/03/01
Treena S. Greene v. NC DOC, Pamlico Correctional Institution	00 OSP 1647	Chess	02/28/01
Susan Mote Smith v. NC DHHS/Murdoch Center	00 OSP 1662	Mann	02/23/01
Thomas Michael Chamberlain v. Alamance Community College	00 OSP 1799	Chess	03/22/01
Danielle Hannon-Fox v. Nash Community College	00 OSP 1872	Mann	03/14/01
Mary Ann Suprenant v Randolph County Mental Health	00 OSP 2089	Morrison	02/14/01
Billy Wayne Lacy v. Sandhills Center for Mental Health DD & SAS	00 OSP 2127	Morrison	02/28/01
Erthel Hines v. NC Agricultural & Technical State University	00 OSP 2139	Morrison	12/21/00
Johnny Lee Brown v. Harnett Correctional Institute	00 OSP 0146	Chess	03/06/01
Donna Pierce v. NC DOC, Div. of Alcoholism & Chemical Dependency Prog.	00 OSP 2205	Gray	04/23/01
Henry C. Parks v. EEO Title VII Section, Cheryl C. Fellers	01 OSP 0063	Elkins	04/11/01
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Harvey L Justice Jr v. North Carolina Central University	01 OSP 0287	Lassiter	04/04/01
<b>STATE TREASURER</b>			
Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00
<b>DEPARTMENT OF REVENUE</b>			
Eddie B. Thomas v. NC Department of Revenue	00 REV 0530	Gray	08/24/00
Samuel W. Hinshaw v. NC Department of Revenue	00 REV 1008	Gray	12/20/00
<b>SECRETARY OF STATE</b>			
Pamela J. Rollefson v. Secretary of State (Notary Division)	00 SOS 1470	Conner	01/26/01
<b>UNIVERSITY OF NORTH CAROLINA</b>			
Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00

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Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00
Ande West v. UNC Hospitals	00 UNC 1267	Conner	12/14/00
Lisa Morelli v. SODCA Representative, UNC Hospitals	00 UNC 1328	Gray	12/28/00
Felicia Higgins v. UNC Hospitals at Chapel Hill	00 UNC 1486	Mann	02/23/01
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STATE OF NORTH CAROLINA  
COUNTY OF AVERY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
00 EHR 1468

CLARK STONE COMPANY, INC. )  
Petitioner, )  
vs. )  
N.C. DEPARTMENT OF ENVIRONMENT AND NATURAL )  
RESOURCES, DIV. OF LAND RESOURCES )  
Respondent. )  
and )  
APPALACHIAN TRAIL CONFERENCE; NATIONAL )  
CONSERVATION ASSOCIATION; UNINCORPORATED )  
ASSOCIATION OF CITIZENS TO PROTECT BELVIEW )  
MOUNTAIN; OLLIE COX AND FAYE WILLIAMS )  
Respondent Intervenor )

RECOMMENDED DECISION  
BY SUMMARY JUDGMENT

Upon consideration of Petitioner’s Motion for Summary Judgment, the Respondent and Respondent-Intervenors’ responses thereto, all parties’ oral arguments, all pleadings in the case, depositions, answers to interrogatories, requests for admissions, photographs, case law, and all other documents submitted by the parties, the undersigned hereby **GRANTS** Petitioner’s Motion.

**FINDINGS OF FACT**

1. On February 26, 1999, Petitioner applied for a mining permit for 151.36 acres of land at the Putnam Mine in Avery County, North Carolina.
2. On May 13, 1999, Respondent issued Petitioner the requested mining permit and forwarded such permit to Petitioner under cover letter dated May 14, 1999. In such letter, Tracey Davis, P.E., State Mining Specialist for the Respondent’s Division of Land Resources’ Land Quality Section stated that “[t]he application for a mining permit for the [Putnam Mine] mine site has been found to meet the requirements of G.S. 74-51 of The Mining Act of 1971.” Respondent permitted 151.36 acres at this site and approved 46.82 acres of land to be disturbed by mining activity.
3. Within the 46.82 acres of Phase I, Respondent permitted Petitioner to excavate for rock in an excavation area comprised of 22.00 acres, and in a smaller area comprised of approximately 3.5 acres. Under the mining permit, no land-disturbing activity could be conducted beyond the 46.82 acres (ie. in the areas designated as Phase 2) until Petitioner submitted a modification request to Respondent, and Respondent approved such request.
4. When Respondent issued this permit, it made no findings under N.C. Gen. Stat. § 74-51(d) that Petitioner’s mining operation would have a significantly adverse effect on the Appalachian Trail.
5. In reliance on the issuance of this permit, Petitioner began preparing the Putnam Mine site for its mining operations, and made substantial expenditures in preparing and constructing the site. Respondent’s preparation and construction was done in accordance with its intentions and plans that Respondent had reviewed and approved in issuing Petitioner’s permit.
6. No one challenged Respondent’s issuance of this permit by any means, including filing a petition for a contested case hearing at the Office of Administrative Hearings.
7. On February 10, 2000, Jay Leutze notified Charles Gardner, Director of Land Resources, of his concerns about the visibility of the Putnam Mine from the Appalachian Trail.
8. On February 23, 2000, Gardner met with Jay Leutze and Witt Langstaff to hear their concerns.
9. On February 23, 2000, Gardner and several others viewed the mine site from the Appalachian Trail on Yellow Mountain.

10. On February 28, 2000, Gardner orally told Paul Brown that Respondent would hold a public meeting concerning the mine.
11. On March 2, 2000, Gardner visited the Putnam Mine site again. That same day, Gardner, other Respondent's employees, Petitioner's representative, and others viewed the Putnam Mine site from the Appalachian Trail on Hump Mountain.
12. From his observations on February 23 and March 2, 2000, Gardner could clearly see the mine site's clearing and gradings from the Appalachian Trail.
13. On March 9 and 15, 2000, Respondent published Notices that it would hold a public meeting on March 16, 2000 concerning the Putnam Mine.
14. On March 16, 2000, Respondent conducted a public hearing about the Putnam Mine at Avery County Courthouse in Newland. Randy Carpenter made a presentation on Petitioner's behalf. Thirty-one other persons also spoke about the mine. Mr. Charles Gardner attended the hearing.
15. From March 22, 2000 through April 13, 2000, Petitioner and Respondent discussed, by letters and in face-to-face meetings, the mine, its possible visual and auditory impacts on the Appalachian Trail, and possible measures that would mitigate any such impacts .
16. By letter dated April 19, 2000, Respondent issued a Notice of Intent to Revoke Petitioner's mining permit on the grounds that the "mining operation, as permitted, with associated noise and visual impacts, will result in significantly adverse effects on the purposes of the Appalachian Trail, a national park. For that reason, pursuant to N.C.G.S. 74-58, the Department is providing notice of its intent to revoke the permit" unless sufficient modifications to mitigate the effects could be taken. Respondent also advised Petitioner of its right to request an informal conference with Respondent to discuss the matter.
17. On April 26, 2000, by letter from Paul Brown, Petitioner requested an informal conference with Respondent.
18. On May 7, 2000, Respondent's counsel, Sueanna Sumpter, faxed to Petitioner's counsel, Harold Berry, confirmation that the informal conference would be held on May 22, 2000.
19. On May 22, 2000, Mr. Charles Gardner conducted an informal conference with Petitioner's representatives and attorney. Several employees from Respondent's Land Quality Section, and Ms. Sumpter also attended. During such meeting, Respondent asked Petitioner to present a modification proposal, including a landscape plan, addressing visual and acoustic impacts of the mining site on the Appalachian Trail, to Respondent by July 1, 2000.
20. After the informal conference and continuing through late August 2000, the parties continued negotiating ways to mitigate or reduce any adverse impacts Petitioner's mining site may have had upon the Appalachian Trail. However, the parties failed to reach an agreement.
21. On August 29, 2000, Respondent conducted a second public hearing "to receive public comment on Clark Stone Company's proposals for modifications of its Mining Permit to mitigate adverse effects from the Putnam mine on the purposes of the Appalachian Trail in Avery County." Randy Carpenter made a presentation on Petitioner's behalf and presented written comments. Twenty-nine other persons made comments. Charles Gardner also attended the hearing.
22. By letter dated September 6, 2000, Charles Gardner notified Petitioner that Respondent was revoking Petitioner's Putnam mine permit because "the operation of the mine has violated, and will continue to violate the Mining Act of 1971 (Mining Act), specifically N.C.G.S. § 74-51(d)(5), because it has had and will continue to 'have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area,' specifically the Appalachian Trail in the vicinity of Hump Mountain." Mr. Gardner further stated that "I find that the violations of the N.C.G.S. § 74-51(d)(5) are willful within the meaning of N.C.G.S. § 74-58(a), in that the Putnam Mine is so located and its operation is so designed that its ordinary operation as intended has had and would continue to have significant adverse effects, both visual and acoustical, on the purposes of the Trail."
23. Respondent's sole basis for revoking Petitioner's mining permit was the alleged "violation of this Article" [the Mining Act] and N.C.G.S. § 74-51(d)(5).
24. Respondent concedes that Petitioner was, and is, in compliance with the operating terms and conditions of its permit. (Gardner Deposition, p. 41).
25. There was and is no dispute that Petitioner did not violate any rules of the Mining Act or violate its approved reclamation plan.

26. On October 10, 2000, Petitioner filed a petition for a contested case hearing with the Office of Administrative Hearings appealing Respondent's decision to revoke the subject mining permit.
27. In the April 3, 2001 Amended Pretrial Order, the parties stipulated, and it is found as fact that the Appalachian National Scenic Trail on and in the vicinity of Hump Mountain in Avery County, North Carolina, including that portion from which the Putnam Mine is contended in this case to be visible and audible, is publicly owned.
28. On March 13, 2001 and April 5, 2001, respectively, Petitioner filed a Motion for Summary Judgment, and an Amended Motion for Summary Judgment. On April 5, 2001, Respondent and Respondent-Intervenor filed its response thereto. Shortly thereafter, Petitioner filed a Motion in Limine, and a Motion to Compel. Respondent also filed a Motion in Limine.
29. In April 9, 2001, the undersigned heard oral arguments on the Motion for Summary Judgment and on the other motions filed by the parties. At such hearing, Respondent-Intervenor moved the undersigned to reconsider her earlier Order of Intervention, and broaden the scope of such intervention and the scope of this contested case hearing.
30. At no time relevant to the matter in these proceedings, did Respondent pursue modification of Petitioner's permit or reclamation plan pursuant to N.C. Gen. Stat. § 74-57 by giving Petitioner written notice that the "activities under the reclamation plan and other terms and conditions of the permit are failing to achieve the purposes and requirement of" the Mining Act.
31. There is no dispute that N.C. Gen. Stat. § 74-51 provided Respondent a procedure to investigate and evaluate Petitioner's mining permit application.
32. There is no dispute that neither the Petitioner's mining operation nor the Putnam mine site itself has changed since Respondent issued Petitioner's mining permit. There is no dispute that Chapter 74 of the N.C. General Statutes has not changed since Respondent issued Petitioner's mining permit.

The only factor that has changed since Respondent issued Petitioner's mining permit is that persons began objecting to Petitioner's mining operation when Petitioner began preparing and constructing its mining site in accordance with its approved permit.

33. There is no dispute that if Respondent's agents and employees had exercised due diligence in investigating and evaluating Petitioner's mining permit application, it would have discovered that Petitioner's mining operation at the Putnam mine was visible and audible from the Appalachian Trail.

### CONCLUSIONS OF LAW

1. Summary judgment may be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that any party is entitled to a judgment as a matter of law. N.C. Gen. Stat. § 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure. Upon making a Motion for Summary Judgment, the moving party bears the burden of showing that (1) there is no genuine issue of material fact, and (2) that he is entitled to judgment as a matter of law. Rowe v. Franklin County, 79 N.C. App. 392, 339 S.E.2d 428 (1986).
2. In this case, Petitioner has proven there are no genuine issues of material fact. Our courts have held that "an issue as to the existence of power or authority in a particular administrative agency is one primarily of statutory construction. Golden Rule Insurance Co. v. Long, 113 N.C. App. 187, 195, 439 S.E.2d 599, 603, 335 N.C. 535, 439 S.E.2d 145 (1993) When the issue to be decided is one of statutory interpretation, it is "a question of law for the court to decide." Rowe v. Franklin County, 79 N.C. App. at 395. 3.
3. Therefore, the only issue in this case to be resolved is whether Petitioner is entitled to judgment as a matter of law. In other words, did Respondent exceed the scope of its authority under the Mining Act of 1971, fail to use proper procedure, erroneously interpret its guiding statutes and regulations, deprive Petitioner of substantial property rights, or act arbitrarily and capriciously in revoking Petitioner's mining permit for allegedly "violating" the Mining Act, specifically, N.C. Gen. Stat. § 74-51(d).
4. The Mining Act of 1971, in N.C. Gen. Stat. § 74-46 through 74-68, sets forth the processes, standards, and conditions for applying for, issuing, modifying, renewing, and revoking a mining permit. The General Assembly delegated the Respondent the authority to carry out the duties and responsibilities enumerated therein, including the authority to issue and revoke mining permits.
5. N.C. Gen. Stat. § 74-58, entitled "Suspension or revocation of permit," provides in pertinent part:

**Whenever the Department shall have reason to believe that a violation of (i) this Article, (ii) any rules adopted under this Article, or (iii) the terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of the apparent violation upon the operator, specifying the facts constituting the**

apparent violation and informing the operator of the operator's right to an informal conference with the Department. . . If the operator or the operator's representative does not appear at the informal conference, or if the Department following the informal conference finds that there has been a violation, the Department may suspend the permit until the violation is corrected or may revoke the permit where the violation appears to be willful. (Emphasis added)

6. N.C. Gen. Stat. § 74-51, entitled "Permits – Application, granting, conditions," provides in pertinent part:

(d) The Department **may** deny the permit upon finding:

...

(5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area;

(Emphasis added)

(e) In the absence of any finding set out in subsection (d) of this section, or if adverse effects are mitigated by the applicant as determined necessary by the Department, a permit shall be granted.

7. It is clear that the purpose of the Mining Act is to allow for the mining of valuable minerals from lands throughout the State, while minimizing the adverse impacts on the surrounding environment, protecting the general welfare, health, and safety of the citizens from undesirable land and water conditions, and protecting the scenic values of such all lands. N.C. Gen. Stat. § 74-47, - 48. The legislature delegates Respondent the authority and discretion to balance these competing interests.

8. In N.C. Gen. Stat. § 74-51, the legislature outlines specific procedures for Respondent to follow during the permitting process so that Respondent will carefully review all mining applications to ensure that the Mining Act's purposes are met before Respondent issues a mining permit. In implementing those procedures, it gives the Respondent broad discretion in deciding whether to issue or deny a mining permit.

9. Specifically, by using the word "may" in N.C. Gen. Stat. § 74-51(d), the legislature gives the Respondent broad discretion to either deny a permit, issue a permit, or issue a permit contingent upon the applicant's compliance with express conditions or mitigation measures that Respondent determines are necessary. N.C. Gen. Stat. § 74-51(d) Under this statute's wording, Respondent may, in its discretion, find an "adverse effect" listed in N.C. Gen. Stat. § 74-51(d) exists during the permitting process, and still grant the applicant a mining permit.

10. Not only may Respondent use its discretion to determine if, and to what extent, an "adverse effect" exists under N.C. Gen. Stat. § 74-51(d), but also may exercise its discretion to define what measures, if any, are necessary to mitigate any possible adverse effects of the mining operation on the environment, and expressly condition issuance of a permit on the permit applicant completing such measures. N.C. Gen. Stat. § 74-51(e) and (f). If Respondent determines certain conditions are necessary to mitigate an "adverse effect" found under N.C. Gen. Stat. § 74-51, and such conditions are insufficient to mitigate that "adverse effect," then Respondent, in its discretion, may deny the permit.

11. By giving Respondent such broad discretion, the legislature recognizes that in permit application cases where Respondent finds any one of those 7 "adverse effects" in N.C. Gen. Stat. § 74-51(d) exist, the Respondent will need to exercise its discretion to assess the degree and magnitude of the "adverse effect" to determine whether to issue a permit with or without conditions, or deny the applied-for mining permit. Most importantly, the legislature recognizes that Respondent will need discretion to carry out the purposes of the Act to balance the competing interests of those wishing to mine the lands with the interests of protecting the surrounding environment and the general welfare, health and safety of the neighboring citizens. Thus, the purpose of the Act is not to be an absolute bar to mining if Respondent finds any "adverse effects" in N.C. Gen. Stat. § 74-51 exist or be a guarantee that those "adverse effects" would never occur.

12. If the plain meaning of the words used in a statute are clear and unambiguous within the context of the statute, they are to be given their plain and ordinary meanings. Brown v. Flowe, 349 N.C. 520, 507 S.E.2d 894 (1998) Similarly, if the language of the statute is clear, the court must implement the statute according to the plain meaning of its terms. Robert v. Young, 120 N.C. App. 720, 724, 464 S.E.2d 78, 82 (1995)

13. The plain language of N.C. Gen. Stat. § 74-51(d) indicates that Respondent is to exercise its discretion and balance these competing interests during the permit application process. The statute clearly states that "the Department may deny the permit upon finding" any of the seven (7) listed "adverse effects" exist at that time. Nowhere in that statute or elsewhere in the Mining Act does the legislature state that the criteria in N.C. Gen. Stat. § 74-51(d) are to be determined at any other time. Nowhere in the Mining Act

does the legislature designate the criteria in N.C. Gen. Stat. § 74-51(d) to be “violations of this Article” and thus, reasons for revoking an existing or already-issued mining permit.

14. In other provisions of the Mining Act, the legislature clearly designates certain actions be considered “violations” of the Act. In N.C. Gen. Stat. § 74-56(d), the legislature provides that “failure to implement the reclamation plan shall constitute grounds for suspension or revocation of the operator’s permit. . .” N.C. Gen. Stat. § 74-54(e) provides that all mining operations must post a surety bond, and if a surety’s license to do business in North Carolina is suspended and the mining operator fails to substitute another surety, “the operator’s permit shall be automatically revoked.” Additionally, in N.C. Gen. Stat. § 74-51(f), the General Assembly provides that “Violation of any conditions of the permit shall be treated as a **violation of this Article** and shall constitute a basis for suspension or revocation of the permit.” (Emphasis added)

15. Had the legislature intended that a reason for denying a mining permit application also be a reason for revoking a mining permit, it would have so provided. Here, the legislature clearly intends the Respondent to carefully review all mining applications to ensure that the purposes of the Mining Act are followed before a permit is issued. In considering the purposes of the application process and Respondent’s power in issuing a permit, the North Carolina Court of Appeals has stated:

The Mining Act clearly declares that DEHNR is vested with authority to decide who will be granted mining permits in North Carolina. DEHNR also has the authority to condition a party’s ability to mine on compliance with various requirements, and in doing so must attempt to protect the surrounding environment from potential hazards caused by specific projects.

Martin Marietta Technologies, Inc. v. Brunswick County, 126 N.C. App. 806, 810, 487 S.E.2d 145, 147, rev. on other grounds, 348 N.C. 688, 500 S.E.2d 665 (1998)

16. In this case, the legislature’s intent is very clear that Respondent’s discretionary decisions regarding the “adverse effects” in N.C. Gen. Stat. § 74-51(d) are decisions to be made only during the permitting process. The mere listing of the “adverse effects” or criteria in N.C. Gen. Stat. § 74-51(d) as a part of the Article known as the Mining Act of 1971, does not automatically categorize them as “violations of this Article.” This is particularly true when the legislative intent shows otherwise.

17. Where the terms of a statute are clear and unambiguous, the Courts must give a statute its plain and definite meaning, and the Courts “are without power to create provisions and limitations not contained in the language of a statute itself.” Gibbons v. Cole, 132 N.C. App. 777, 513 S.E.2d 834 (1999) Given the plain meaning of N.C. Gen. Stat. § 74-51(d) and the Mining Act, this Court can not create statutory provisions that the “adverse effects” or the reasons for denial of a permit in N.C. Gen. Stat. § 74-51(d), are also, in and of themselves, “violations” of the Mining Act. To hold otherwise, would be contrary to the plain meaning of the Mining Act statutes, and not accordance with accepted rules of statutory construction.

18. Respondent argues that if it has the authority to deny a permit for the reasons listed in N.C. Gen. Stat. § 74-51(d), then to serve the purposes of the Mining Act, it also should have the power to revoke a permit if any of the “adverse effects” listed in N.C. Gen. Stat. § 74-51(d) arise after a permit has been issued. This argument fails for 2 reasons. First, as indicated above, the language of the statute and the legislature’s intent clearly shows that Respondent’s discretionary decisions regarding the existence of “adverse effects” listed in N.C. Gen. Stat. § 74-51(d) are decisions to be made and addressed by the Respondent during the permitting process.

Secondly, in N.C. Gen. Stat. § 74-57, the legislature provides Respondent a procedure and remedy to deal with situations when the mining “activities under the reclamation plan, and other terms and conditions of the permit” fail to achieve the purposes and requirements of the Mining Act; that is, fail to balance the competing interests to mine valuable minerals from North Carolina lands, versus the protection of the environmental and scenic values of these lands. Under that statute and fact scenario, the Respondent has the right to modify a permit holder’s reclamation plan and a permit’s terms and conditions as it deems appropriate in view of the evidence. In this case, Respondent failed to take advantage of the remedy in N.C. Gen. Stat. § 74-57 that the legislature so clearly provided.

19. Lastly, given Respondent’s broad discretion in N.C. Gen. Stat. § 74-51, it has an affirmative duty to exercise due diligence to determine the possible existence of the “adverse effects” listed in N.C. Gen. Stat. § 74-51(d), consider those effects’ degree and magnitude, and make the appropriate decision regarding those “adverse effects” impact on the issuance of a mining permit.

20. In this case, if Respondent’s agents and/or employees had exercised due diligence in evaluating Petitioner’s permit application and the possible existence of the N.C. Gen. Stat. § 74-51(d) “adverse effects,” it would have discovered that the Putnam mining site operated by Petitioner was visible and audible from the Appalachian Trail.

21. Regardless whether Respondent knew, before it issued Petitioner’s mining permit, if the Appalachian Trail was visible from the Putnam mine site, there was a procedure in place to deal with such “adverse effects” during the permitting process, and respondent’s decision was discretionary in nature. Given that there have been no changes in the permit application or the Putnam mine site, no discrepancies in Petitioner’s preparation of the site, and Petitioner has made substantial expenditures in reliance on

**CONTESTED CASE DECISIONS**

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Respondent's issuance, it is now fundamentally unfair and inequitable to Petitioner, for Respondent to change its previous exercise of discretion because either its application procedure was flawed, or Respondent changed its mind after they issued the permit. Simply because respondent made a mistake in judgment does not create an opportunity to re-evaluate case now, nor does the legislature authorize it. To allow Respondent to reverse its discretionary decision of issuing a permit in good faith under this scenario would create unjust and appalling public policy.

22. For the reasons stated above, the Respondent was without authority to revoke Petitioner's Putnam Mine permit for the reasons stated in its Notice of Revocation, erred as a matter of law in its interpretation of the Mining Act, and failed to use proper procedure in its revocation process.

23. For the foregoing reasons, Petitioner has met its burden of proof, and it is entitled to judgment as a matter of law.

**RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that the N.C. Department of Environment and Natural Resources grant Summary Judgment for the Petitioner as there are no genuine issues of material facts in this case, and Petitioner has proved that it is entitled to judgment as a matter of law. The undersigned recommends that the Department's decision to revoke Petitioner's Mining permit, permit no. 06-09 be REVERSED.

As the undersigned is recommending Summary Judgment for Petitioner, it need not rule upon the parties' other pending motions.

**ORDER AND NOTICE**

The N.C. Department of Environment and Natural Resources will make the final decision in this contested case. It is required to give each party an opportunity to file exceptions to this recommended decision and present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a). Pursuant to N.C.G.S. § 150B-36(b), this agency shall serve a copy of the final decision on all parties, and the parties' attorneys of record, and the Office of Administrative Hearings.

This the 2<sup>nd</sup> day of May 2001.

\_\_\_\_\_  
Melissa Owens Lassiter  
Administrative Law Judge